

SOUTH CAROLINA STATE REGISTER DISCLAIMER

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SOUTH CAROLINA STATE REGISTER

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of the
GENERAL ASSEMBLY

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This issue contains notices, proposed regulations, emergency regulations, final form regulations, and other documents filed in the Office of the Legislative Council, pursuant to Article 1, Chapter 23, Title 1, Code of Laws of South Carolina, 1976.

SOUTH CAROLINA STATE REGISTER

An official state publication, the *South Carolina State Register* is a temporary update to South Carolina's official compilation of agency regulations--the *South Carolina Code of Regulations*. Changes in regulations, whether by adoption, amendment, repeal or emergency action must be published in the *State Register* pursuant to the provisions of the Administrative Procedures Act. The *State Register* also publishes the Governor's Executive Orders, notices or public hearings and meetings, and other documents issued by state agencies considered to be in the public interest. All documents published in the *State Register* are drafted by state agencies and are published as submitted. Publication of any material in the *State Register* is the official notice of such information.

STYLE AND FORMAT

Documents are arranged within each issue of the *State Register* according to the type of document filed:

Notices are documents considered by the agency to have general public interest.

Notices of Drafting Regulations give interested persons the opportunity to comment during the initial drafting period before regulations are submitted as proposed.

Proposed Regulations are those regulations pending permanent adoption by an agency.

Pending Regulations Submitted to the General Assembly are regulations adopted by the agency pending approval by the General Assembly.

Final Regulations have been permanently adopted by the agency and approved by the General Assembly.

Emergency Regulations have been adopted on an emergency basis by the agency.

Executive Orders are actions issued and taken by the Governor.

2008 PUBLICATION SCHEDULE

Documents will be accepted for filing on any normal business day from 8:30 A.M. until 5:00 P.M. All documents must be submitted in the format prescribed in the *Standards Manual for Drafting and Filing Regulations*.

To be included for publication in the next issue of the *State Register*, documents will be accepted no later than 5:00 P.M. on any closing date. The modification or withdrawal of documents filed for publication must be made by **5:00 P.M.** on the closing date for that issue.

	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
Submission Deadline	1/11	2/8	3/14	4/11	5/9	6/13	7/11	8/8	9/12	10/10	11/14	12/12
Publishing Date	1/25	2/22	3/28	4/25	5/23	6/27	7/25	8/22	9/26	10/24	11/28	12/26

REPRODUCING OFFICIAL DOCUMENTS

Documents appearing in the *State Register* are prepared and printed at public expense. Media services are encouraged to give wide publicity to documents printed in the *State Register*.

PUBLIC INSPECTION OF DOCUMENTS

Documents filed with the Office of the State Register are available for public inspection during normal office hours, 8:30 A.M. to 5:00 P.M., Monday through Friday. The Office of the State Register is in the Legislative Council, Fourth Floor, Rembert C. Dennis Building, 1000 Assembly Street, in Columbia. Telephone inquiries concerning material in the *State Register* or the *South Carolina Code of Regulations* may be made by calling (803) 212-4500.

ADOPTION, AMENDMENT AND REPEAL OF REGULATIONS

To adopt, amend or repeal a regulation, an agency must publish in the *State Register* a Notice of Drafting; a Notice of the Proposed Regulation that contains an estimate of the proposed action's economic impact; and, a notice that gives the public an opportunity to comment on the proposal. If requested by twenty-five persons, a public hearing must be held at least thirty days after the date of publication of the notice in the *State Register*.

After the date of hearing, the regulation must be submitted to the General Assembly for approval. The General Assembly has one hundred twenty days to consider the regulation. If no legislation is introduced to disapprove or enacted to approve before the expiration of the one-hundred-twenty-day review period, the regulation is approved on the one hundred twentieth day and is effective upon publication in the *State Register*.

EMERGENCY REGULATIONS

An emergency regulation may be promulgated by an agency if the agency finds imminent peril to public health, safety or welfare. Emergency regulations are effective upon filing for a ninety-day period. If the original filing began and expired during the legislative interim, the regulation can be renewed once.

REGULATIONS PROMULGATED TO COMPLY WITH FEDERAL LAW

Regulations promulgated to comply with federal law are exempt from General Assembly review. Following the notice of proposed regulation and hearing, regulations are submitted to the *State Register* and are effective upon publication.

EFFECTIVE DATE OF REGULATIONS

Final Regulations take effect on the date of publication in the *State Register* unless otherwise noted within the text of the regulation.

Emergency Regulations take effect upon filing with the Legislative Council and remain effective for ninety days. If the original ninety-day period begins and expires during legislative interim, the regulation may be refiled for one additional ninety-day period.

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In order by General Assembly review expiration date
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3119		SR32-2	Educational Requirements	1/13/08	LLR - Real Estate Appraisers Board
3116		SR32-2	Malpractice Insurance Claims	1/20/08	Department of Insurance
3117		SR32-2	Workers' Compensation Assigned Risk Rates	1/20/08	Department of Insurance
3109		SR32-2	Property Tax	1/29/08	Department of Revenue
3110		SR32-2	Restocking Fees	1/29/08	Department of Revenue
3122		SR32-5	Wildlife Management Area Regulations	4/13/08	Department of Natural Resources
3113		SR32-5	Solid Waste Management	5/05/08	Department of Health and Envir Control
3125		SR32-5	Driver Schools and Truck Driver Training Schools	5/07/08	Department of Public Safety
3112		SR32-5	Environmental Protection Fees	5/07/08	Department of Health and Envir Control
3114		SR32-5	Tanning Facilities	5/07/08	Department of Health and Envir Control
3126		SR32-5	Motor Carrier Regulations	5/07/08	Public Service Commission
3133		SR32-5	Weights and Measures	5/07/08	Department of Agriculture
3123	R200	SR32-3	Gasoline, Lubricating Oils and Other Petroleum Products	5/07/08	Department of Agriculture
3124		SR32-5	Eligible Telecommunications Carrier	5/07/08	Public Service Commission
3128		SR32-5	Electric Systems and Gas Systems	5/07/08	Public Service Commission
3141		SR32-5	Wildlife Management Area Regulations	5/07/08	Department of Natural Resources
3143		SR32-5	Free Tuition for Residents Sixty Years of Age	5/07/08	Commission on Higher Education
3135		SR32-5	Chapter Revision (136-001 through 136-799)	5/07/08	LLR - Commissioners of Pilotage
3174		SR32-5	SC Procurement Regulations - Pre-Bid Conferences	5/07/08	Budget and Control Board
3175		SR32-5	SC Procurement Regulations	5/07/08	Budget and Control Board
3149		SR32-5	Environmental Electronic Reporting Requirements	5/07/08	Department of Health and Envir Control
3152		SR32-5	Underground Storage Tank Control Regulations	5/07/08	Department of Health and Envir Control
3138		SR32-5	Free Textbooks	5/08/08	State Board of Education
3151		SR32-5	South Carolina Birth Defects Program	5/08/08	Department of Health and Envir Control
3137		SR32-5	School-To-Work Transition Act	5/09/08	State Board of Education
3155		SR32-5	Water Pollution Control Permits	5/09/08	Department of Health and Envir Control
3154		SR32-5	Individual Sewage Treatment and Disposal Systems	5/09/08	Department of Health and Envir Control
3139		SR32-5	Ice	5/09/08	Department of Health and Envir Control
3181		SR32-6	Barrier Free Building Design	5/10/08	LLR - Building Codes Council
3182		SR32-6	Building Code Repeals	5/10/08	LLR - Building Codes Council
3183		SR32-6	Modular Building Construction Act	5/10/08	LLR - Building Codes Council
3150		SR32-6	Hazardous Waste Management	5/10/08	Department of Health and Envir Control
3168		SR32-6	SCDOT Secretary of Transportation Approval of Actions	5/13/08	Department of Transportation
3111	R212	SR32-4	Coastal Division Regulations	5/13/08	Department of Health and Envir Control
3129		SR32-6	Licensing Criteria	5/14/08	Commission on Higher Education
3170		SR32-6	Nonpublic Postsecondary Inst. Licensing - Bond Funds	5/14/08	Commission on Higher Education
3161	R221	SR32-4	Water Classifications and Standards	5/16/08	Department of Health and Envir Control
3179	R211	SR32-4	Data Reporting Requirements - S.C. Hospitals	5/16/08	Budget and Control Board
3160		SR32-6	Shellfish	5/16/08	Department of Health and Envir Control
3162		SR32-6	Standards of Performance for Asbestos Projects	5/22/08	Department of Health and Envir Control
3134		SR32-6	Standards for Licensing Nursing Homes	5/22/08	Department of Health and Envir Control
3180		SR32-6	Actuarial Opinion and Memorandum Regulation	5/30/08	Department of Insurance
3178		SR32-6	Data Reporting Requirements - Ambulatory Data	5/31/08	Budget and Control Board
3172		SR32-6	SC Residency Program	6/04/08	Commission on Higher Education
3173		SR32-6	SC HOPE Scholarship	6/04/08	Commission on Higher Education
3185		SR32-6	SC Need-based Grants Program	6/04/08	Commission on Higher Education
3158		SR32-6	Sales Tax	6/04/08	Department of Revenue
3159		SR32-6	Accommodation	6/04/08	Department of Revenue
3163		SR32-6	Sales Tax	6/04/08	Department of Revenue
3164		SR32-6	Communications Services	6/04/08	Department of Revenue
3165		SR32-6	Transportation Project Prioritization	6/04/08	Department of Transportation
3167		SR32-6	SCDOT Commission Approval of Actions	6/04/08	Department of Transportation
3195		SR32-6	Prequalification of Bidders	6/04/08	Department of Transportation
3193	R266	SR32-6	Practice of Dietetics within the State of SC	1/17/09	LLR - Panel for Dietetics
3189			Food Tax	1/27/09	Department of Revenue
3191			Advanced Placement	2/01/09	State Board of Education
3192			Requirements for Additional Areas of Certification	2/01/09	State Board of Education
3202			Requirements for Licensure as a Physical Therapist	3/03/09	LLR - Board of Physical Therapy Examiners
3201			Mobile Dental Facilities and Portable Dental Operations	3/04/09	LLR - Board of Dentistry
3196			S.C. National Guard College Assistance Program	3/23/09	Commission on Higher Education
3206			Application, Renewal and Continuing Education	3/31/09	LLR - Board of Chiropractic Examiners
3207			Board of Veterinary Medical Examiners Chapter Revision	3/31/09	LLR - Bd of Veterinary Medical Examiners
3204			Licensing Standards for Continuing Care		
			Retirement Communities	4/01/09	Department of Consumer Affairs
3199			South Carolina Trauma Care Systems	4/01/09	Department of Health and Envir Control

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3209	Operation of Public Pupil Transportation Services	4/27/09	State Board of Education
3214	Fire Prevention and Life Safety	5/12/09	LLR - Office of State Fire Marshal
3215	Fire Prevention and Life Safety for Special Occupancies	5/12/09	LLR - Office of State Fire Marshal
3216	Explosives	5/12/09	LLR - Office of State Fire Marshal
3217	Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	5/12/09	LLR - Office of State Fire Marshal
3218	Liquefied Petroleum (LP) Gas	5/12/09	LLR - Office of State Fire Marshal
3219	Fireworks and Pyrotechnics	5/12/09	LLR - Office of State Fire Marshal
3220	Fire Prevention and Life Safety in Local Detention Facilities	5/12/09	LLR - Office of State Fire Marshal
3213	Annual Audited Financial Reporting Regulation	5/20/09	Department of Insurance
Committee Requested Withdrawal:			
3166	SCDOT Chief Internal Auditor		Department of Transportation
3184	Restructuring ATF Regulations - Pyrotechnic Safety		LLR - Board of Pyrotechnic Safety
Permanently Withdrawn:			
3118	Mobile Dental Facilities and Portable Dental Operations		LLR: Board of Dentistry
3127	Chapter Revision		LLR - Veterinary Medical Examiners

COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY 3

In order by General Assembly review expiration date
 The history, status, and full text of these regulations are available on the
 South Carolina General Assembly Home Page: www.scstatehouse.net

DOC No.	SUBJECT	HOUSE COMMITTEE	SENATE COMMITTEE
3119	Educational Requirements	Labor, Commerce and Industry	Labor, Commerce and Industry
3116	Malpractice Insurance Claims	Labor, Commerce and Industry	Banking and Insurance
3117	Workers' Compensation Assigned Risk Rates	Labor, Commerce and Industry	Banking and Insurance
3109	Property Tax	Ways and Means	Finance
3110	Restocking Fees	Ways and Means	Finance
3122	Wildlife Management Area Regulations	Agriculture and Natural Resources	Fish, Game and Forestry
3113	Solid Waste Management	Agriculture and Natural Resources	Medical Affairs
3125	Driver Schools and Truck Driver Training Schools	Education and Public Works	Judiciary
3112	Environmental Protection Fees	Agriculture and Natural Resources	Agriculture and Natural Resources
3114	Tanning Facilities	Medical, Military, Pub & Mun Affairs	Labor, Commerce and Industry
3126	Motor Carrier Regulations	Labor, Commerce and Industry	Judiciary
3133	Weights and Measures	Agriculture and Natural Resources	Agriculture and Natural Resources
3123	Gasoline, Lubricating Oils and Other Petroleum Products	Agriculture and Natural Resources	Agriculture and Natural Resources
3124	Eligible Telecommunications Carrier	Labor, Commerce and Industry	Judiciary Committee
3128	Electric Systems and Gas Systems	Labor, Commerce and Industry	Judiciary
3141	Wildlife Management Area Regulations	Agriculture and Natural Resources	Fish, Game and Forestry
3143	Free Tuition for Residents Sixty Years of Age	Education and Public Works	Education
3135	Chapter Revision (136-001 through 136-799)	Labor, Commerce and Industry	Transportation
3174	SC Procurement Regulations - Pre-Bid Conferences	Ways and Means	Finance
3175	SC Procurement Regulations	Ways and Means	Finance
3149	Environmental Electronic Reporting Requirements	Agriculture and Natural Resources	Medical Affairs
3152	Underground Storage Tank Control Regulations	Agriculture and Natural Resources	Medical Affairs
3138	Free Textbooks	Education and Public Works	Invitations
3151	South Carolina Birth Defects Program	Medical, Military, Pub & Mun Affairs	Medical Affairs
3137	School-To-Work Transition Act	Education and Public Works	Education
3155	Water Pollution Control Permits	Agriculture and Natural Resources	Medical Affairs
3154	Individual Sewage Treatment and Disposal Systems	Agriculture and Natural Resources	Medical Affairs
3139	Ice	Agriculture and Natural Resources	Medical Affairs
3181	Barrier Free Building Design	Labor, Commerce and Industry	Labor, Commerce and Industry
3182	Building Code Repeals	Labor, Commerce and Industry	Labor, Commerce and Industry
3183	Modular Building Construction Act	Labor, Commerce and Industry	Labor, Commerce and Industry
3150	Hazardous Waste Management	Agriculture and Natural Resources	Medical Affairs
3168	SCDOT Secretary of Transportation Approval of Actions	Education and Public Works	Transportation
3111	Coastal Division Regulations	Agriculture and Natural Resources	Agriculture and Natural Resources
3129	Licensing Criteria	Education and Public Works	Education
3170	Nonpublic Postsecondary Inst. Licensing - Bond Funds	Education and Public Works	Education
3161	Water Classifications and Standards	Agriculture and Natural Resources	Medical Affairs
3179	Data Reporting Requirements - S.C. Hospitals	Medical, Military, Pub & Mun Affairs	Medical Affairs
3160	Shellfish	Agriculture and Natural Resources	Fish, Game and Forestry
3162	Standards of Performance for Asbestos Projects	Agriculture and Natural Resources	Medical Affairs
3134	Standards for Licensing Nursing Homes	Medical, Military, Pub & Mun Affairs	Medical Affairs
3180	Actuarial Opinion and Memorandum Regulation	Labor, Commerce and Industry	Banking and Insurance
3178	Data Reporting Requirements - Ambulatory Data	Medical, Military, Pub & Mun Affairs	Medical Affairs
3172	SC Residency Program	Education and Public Works	Education
3173	SC HOPE Scholarship	Education and Public Works	Education
3185	SC Need-based Grants Program	Education and Public Works	Education
3158	Sales Tax	Ways and Means	Finance
3159	Accommodation	Ways and Means	Finance
3163	Sales Tax	Ways and Means	Finance
3164	Communications Services	Ways and Means	Finance
3165	Transportation Project Prioritization	Education and Public Works	Transportation
3167	SCDOT Commission Approval of Actions	Education and Public Works	Transportation
3195	Prequalification of Bidders	Ways and Means	Transportation
3193	Practice of Dietetics within the State of SC	Medical, Military, Pub & Mun Affairs	Labor, Commerce and Industry
3189	Food Tax	Ways and Means	Finance
3191	Advanced Placement	Education and Public Works	Education
3192	Requirements for Additional Areas of Certification	Education and Public Works	Education
3202	Requirements for Licensure as a Physical Therapist	Medical, Military, Pub & Mun Affairs	Medical Affairs
3201	Mobile Dental Facilities and Portable Dental Operations	Medical, Military, Pub & Mun Affairs	Medical Affairs
3196	S.C. National Guard College Assistance Program	Education and Public Works	Education
3206	Application, Renewal and Continuing Education	Medical, Military, Pub & Mun Affairs	Medical Affairs
3207	Board of Veterinary Medical Examiners Chapter Revision	Agriculture and Natural Resources	Labor, Commerce and Industry
3204	Licensing Standards for Continuing Care Retirement Communities	Medical, Military, Pub & Mun Affairs	Medical Affairs
3199	South Carolina Trauma Care Systems	Medical, Military, Pub & Mun Affairs	Medical Affairs
3209	Operation of Public Pupil Transportation Services	Education and Public Works	Education

4 COMMITTEE LIST OF REGULATIONS SUBMITTED TO GENERAL ASSEMBLY

3214	Fire Prevention and Life Safety	Labor, Commerce and Industry	Labor, Commerce and Industry
3215	Fire Prevention and Life Safety for Special Occupancies	Labor, Commerce and Industry	Labor, Commerce and Industry
3216	Explosives	Labor, Commerce and Industry	Labor, Commerce and Industry
3217	Portable Fire Extinguishers and Fixed Fire Extinguishing Systems	Labor, Commerce and Industry	Labor, Commerce and Industry
3218	Liquefied Petroleum (LP) Gas	Labor, Commerce and Industry	Labor, Commerce and Industry
3219	Fireworks and Pyrotechnics	Labor, Commerce and Industry	Labor, Commerce and Industry
3220	Fire Prevention and Life Safety in Local Detention Facilities	Labor, Commerce and Industry	Labor, Commerce and Industry
3213	Annual Audited Financial Reporting Regulation		

Committee Requested Withdrawal:

3166	SCDOT Chief Internal Auditor	Education and Public Works	Transportation
3184	Restructuring ATF Regulations - Pyrotechnic Safety	Labor, Commerce and Industry	Labor, Commerce and Industry

Permanently Withdrawn:

3118	Mobile Dental Facilities and Portable Dental Operations	Medical, Military, Pub & Mun Affairs	Medical Affairs
3127	Chapter Revision		Medical Affairs

Executive Order No. 2008-07

WHEREAS, a vacancy exists in the office of Saluda County Treasurer as a result of the resignation of Judy Miller on May 30, 2008; and

WHEREAS, the undersigned is authorized to appoint a County Treasurer in the event of a vacancy pursuant to Sections 1-3-220(2), 4-11-20(1) and 12-45-20 of the South Carolina Code of Laws, as amended; and

WHEREAS, Alfreda Tina Shealy of 107 Linda Street, Saluda, South Carolina 29138, is a fit and proper person to serve as the Treasurer of Saluda County.

NOW, THEREFORE, pursuant to the authority vested in me by the Constitution and Statutes of this State, I hereby appoint Alfreda Tina Shealy as Treasurer of Saluda County until the next general election and until her successor shall qualify.

**GIVEN UNDER MY HAND AND THE GREAT
SEAL OF THE STATE OF SOUTH CAROLINA,
THIS 3rd DAY OF JUNE, 2008.**

**MARK SANFORD
Governor**

6 NOTICES

BUDGET AND CONTROL BOARD

NOTICE

Pursuant to Section 1-34-30(B), the following nationally recognized codes are promulgated, without amendment, effective June 30, 2008. Consistent with Section 10-1-180, information regarding the adoption of these codes, including the code editions, revision years, and any deletions, will be published in the Manual For Planning and Execution of State Permanent Improvements.

International Building Code (IBC), 2006 Edition
International Existing Building Code (IEBC), 2006 Edition
International Fire Code (IFC), 2006 Edition
International Energy Conservation Code (IECC), 2006 Edition
International Fuel Gas Code (IFGC), 2006 Edition
International Mechanical Code (IMC), 2006 Edition
International Plumbing Code (IPC), 2006 Edition
International Private Sewage Disposal Code (IPSDC), 2006 Edition
International Property Maintenance Code (IPMC), 2006 Edition,
International Residential Code for One and Two Family Dwellings (IRC), 2006 Edition
International Wildland – Urban Interface Code (IUIWIC), 2006 Edition
International Code Council Electric Code, 2006 Edition
International Code Council Performance Code (ICCPC), 2006 Edition

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

NOTICE

In accordance with Section 44-7-200(C), Code of Laws of South Carolina, the public is hereby notified that a Certificate of Need application has been accepted for filing and publication June 27, 2008, for the following project(s). After the application is deemed complete, affected persons will be notified that the review cycle has begun. For further information, please contact Mrs. Sarah “Sallie” C. Harrell, Division of Planning and Certification of Need, 2600 Bull St., Columbia, SC 29201 at (803) 545-4200.

Affecting Berkeley County

Relocation of Roper Berkeley Ambulatory Surgery Center, an existing ASC currently licensed for three (3) operating rooms and one procedure room to the first floor of a new Medical Office Building (MOB) to be constructed in Goose Creek, South Carolina which will be known as Carnes Crossroads Surgery Center with an addition of one procedure room for a total of three licensed (3) operating rooms and two (2) procedure rooms

Carnes Crossroads Surgery Center
Goose Creek, South Carolina
Project Cost: \$ 8,684,944

Affecting Charleston County

Purchase and installation of a one hundred twenty-eight (128) slice Computed Tomography (CT) scanner
Roper Hospital, Inc.
Charleston, South Carolina
Project Cost: \$2,002,363

Affecting Cherokee County

Addition of fourteen (14) nursing home beds which will not participate in the Medicaid (Title XIX) Program for a total of one hundred eleven (111) nursing home beds.

Cherokee County Long Term Care Facility (Peachtree Centre)

Gaffney, South Carolina

Project Cost: \$158,671

Affecting Greenwood County

Relocation and modernization of the Physical, Occupational and Speech Therapy Services Department and the addition of a Physician's Conference and Data Center

Self Regional Healthcare

Greenwood, South Carolina

Project Cost: \$2,001,420

Construction of three (3) additional operating rooms (ORs) in its main surgical suite to consist of two general ORs and one specialized neurosurgical OR for a total of thirteen (13) operating rooms

Self Regional Healthcare

Greenwood, South Carolina

Project Cost: \$5,290,000

Affecting Horry County

Addition of a 1.5T Magnetic Resonance Imaging (MRI) system to a new medical office building (MOB) to be located at 210 Village Center Blvd, Myrtle Beach, South Carolina Strand Orthopaedic Consultants, LLC

Myrtle Beach, South Carolina

Project Cost: \$2,130,648

Affecting Pickens County

Acquisition of the existing forty-four (44) bed nursing home, known as Harvey's Nursing Home, by United Health Services of South Carolina, Inc.; the new licensee will be Heritage Healthcare of Pickens, LLC

Heritage Healthcare of Pickens

Six Mile, South Carolina

Project Cost: \$2,420,000

Construction for the establishment of a comprehensive outpatient facility which will house various medical modalities to include one (1) 1.5T Magnetic Resonance Imaging (MRI) unit and one (1) sixteen (16) slice Computed Tomography (CT) scanner to be located at the intersection of Old Easley Bridge Road and SC Highway 153 in Pickens County

Palmetto Health Baptist Easley – Highway 153 Outpatient Facility

Easley, South Carolina

Project Cost: \$35,486,093

Affecting Richland County

Conversion of four (4) Level II intermediate care beds to four (4) Level III intensive care beds in the neonatal intensive care unit (NICU) for a total of eight (8) Level III intensive care beds and twelve (12) Level II intermediate care beds

Palmetto Health Baptist

Columbia, South Carolina

Project Cost: \$ 0

8 NOTICES

Affecting Richland/Lexington Counties

Relocation of the existing sixteen (16) bed Detoxification Unit from 1325 Harden Street to proposed new facility to be located at 2711 Colonial Drive, Columbia, South Carolina
LRADAC- Lexington-Richland Alcohol & Drug Abuse Council
Columbia, South Carolina
Project Cost: \$2,714,738

Affecting Sumter County

Renovation for the purchase and installation of one (1) sixteen (16) slice Computed Tomography (CT) scanner
Tuomey Healthcare System
Project Cost: \$1,330,553

In accordance with S.C. DHEC Regulation 61-15, the public and affected persons are hereby notified that the review cycle has begun for the following project(s) and a proposed decision will be made within 60 days beginning June 27, 2008. "Affected persons" have 30 days from the above date to submit comments or requests for a public hearing to Mr. Les W. Shelton, Division of Planning and Certification of Need, 2600 Bull Street, Columbia, S.C. 29201. For further information call (803) 545-4200.

Affecting Charleston County

Purchase and installation of one (1) sixteen (16) slice computed Tomography (CT) scanner to establish outpatient imaging services by University Medical Associates (UMA) and to provide outpatient chemotherapy infusion services by Medical University Hospital Authority (MUHA) at the Medical University of South Carolina (MUSC) Specialty Care – North
MUSC Specialty Care – North
North Charleston, South Carolina
Project Cost: \$7,555,053

Affecting Greenville County

Acquisition of a da Vinci “S” Surgical System to be housed in the existing surgical suite
Bon Secours St. Francis Health System, Inc.
Greenville, South Carolina
Project Cost: \$2,477,960

Affecting Greenwood County

Relocation and modernization of the Physical, Occupational and Speech Therapy Services Department and the addition of a Physician’s Conference and Data Center
Self Regional Healthcare
Greenwood, South Carolina
Project Cost: \$2,001,420

Affecting Horry County

Replacement of an existing single-slice Computed Tomography (CT) scanner with a sixty-four (64) slice CT scanner
Conway Medical Center
Conway, South Carolina
Project Cost: \$1,550,000

Acquisition of a da Vinci “S” Surgical System to be housed in the current surgical services department
Grand Strand Regional Medical Center
Myrtle Beach, South Carolina
Project Cost: \$2,278,184

Affecting Kershaw County

Construction of an outpatient medical office building (MOB) to include one (1) sixteen (16) slice Computed Tomography (CT) scanner
Kershaw County Medical Center – Camden Medical Complex
Camden, South Carolina
Project Cost: \$11,354,527

Affecting Lexington County

Renovation for the replacement of the existing two (2) slice Computed Tomography (CT) scanner located at LMC – Lexington with a forty (40) slice CT scanner and the subsequent relocation of the two (2) slice CT scanner to LMC – Swansea
Lexington Medical Center – Lexington
Lexington, South Carolina
Project Cost: \$776,501

Affecting Sumter County

Replacement of an existing single slice Computed Tomography (CT) scanner with a four (4) slice CT scanner
Tuomey Healthcare System – Cancer Treatment Center
Sumter, South Carolina
Project Cost: \$826,080

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Notice of Cancellation and Rescheduling of Public Hearing
Pursuant to S.C. Code Ann. Section 1-23-110

State Register Document 3198
Proposed Amendment of R.61-107, Solid Waste Management
Section 61-107.17, Demonstration of Need

Pursuant to S.C. Code Ann. Section 1-23-110, the Department of Health and Environmental Control published a Notice of Proposed Regulation in the S.C. State Register as Document 3198 on January 25, 2008, to amend section 61-107.17, Demonstration of Need, of Regulation 61-107, Solid Waste Management. The Notice provided information on how interested persons could provide input on the proposed amendments of R.61-107 at an informational forum that was conducted by Department staff on February 25, 2008, by submitting written comments during a public comment period that closed February 25, 2008, and/or by attending a public hearing that was scheduled before the Board of Health and Environmental Control (Board) on April 10, 2008. The public hearing for April 10 was cancelled and by this Notice is being rescheduled as provided below. Public comments received at the forum and during the public comment period as referenced above are being considered in formulating the final proposed revisions for consideration at the public hearing and will be submitted to the Board along with the Department’s responses for public hearing.

10 NOTICES

Public Hearing:

The Board of Health and Environmental Control will conduct a public hearing on the proposed amendments of R.61-107, Doc. 3198, on August 14, 2008. The hearing will be held at the regularly-scheduled Board meeting in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. Please use the Bull Street entrance.

The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation of items on the agenda for August 14 will be noticed in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Interested persons are invited to make oral or written comments on the proposed regulation revisions at the public hearing. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written copies of their presentation to the Clerk of the Board for inclusion in the transcript of record of the public hearing. Any comments made at the public hearing will be given consideration in formulating the final version of the regulation revision.

If the Board meeting scheduled for August 14, 2008, is canceled or the public hearing is removed from the agenda, the public hearing will be conducted at the Board meeting on October 9, 2008. The agenda for each Board meeting is published at least 24 hours in advance. Interested persons may review the Board's agenda at www.scdhec.gov/administration/docs/board_agenda.pdf or may contact the Clerk of the Board at 803/898-3300 or lucaslm@dhec.sc.gov.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

PUBLIC NOTICE

Section IV of R.61-98, the State Underground Petroleum Environmental Response Bank (SUPERB) Site Rehabilitation and Fund Access Regulation, requires that the Department of Health and Environmental Control evaluate and certify site rehabilitation contractors to perform site rehabilitation of releases from underground storage tanks under the State Underground Petroleum Environmental Response Bank (SUPERB) Act.

Class I Contractors perform work involving the collection and interpretation of investigative data; the evaluation of risk; and/or the design and implementation of corrective action plans. Class I applicants must satisfy registration requirements for a Professional Engineer or Geologist in South Carolina. Class II Contractors perform work involving routine investigative activities (e.g., soil or ground water sampling, well installation, aquifer testing) where said activities do not require interpretation of the data and are performed in accordance with established regulatory or industry standards.

Pursuant to Section IV.B.1. the Department is required to place a list of those contractors requesting certification on public notice and accept comments from the public for a period of thirty (30) days. If you wish to provide comments regarding the companies and/or individuals listed below, please submit your comments in writing, no later than July 27, 2008 to:

Contractor Certification Program
South Carolina Department of Health and Environmental Control
Bureau of Land and Waste Management - Underground Storage Tank Program
Attn: Michelle Dennison
2600 Bull Street
Columbia, SC 29201

The following companies and/or individuals have applied for certification as Underground Storage Tank Site Rehabilitation Contractors:

Class I

TerraQuest Environmental Consultants, PC
Attn: Chris L. Boggs, PG
100 E Ruffin Street
Mebanc, NC 27302

Class II

Pandey Environmental, LLC
Attn: Atul Pandey
6650 Rivers Ave., Ste 1445
Charleston, SC 29406-4827

**DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL**

NOTICE

Notice is hereby given that, in accordance with Section 6-9-40 of the 1976 Code of Laws of South Carolina, as Amended, the South Carolina Building Codes Council intends to adopt the 2008 Edition of the National Electrical Code for use in the state of South Carolina.

The Council specifically requests comments concerning sections of the proposed edition, which may be unsuitable for enforcement in South Carolina. Written comments may be submitted to Gary F. Wiggins, Council Administrator, at Post Office Box 11329, Columbia, SC 29211-1329, on or before September 1, 2008.

12 DRAFTING

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend R 43-300, Accreditation Criteria. Interested persons may submit comments to Dr. Marsha Johnson, Interim Director of the Office of Quality Assurance, Division of Accountability, SC Department of Education, 1429 Senate Street, Rutledge Building, Room 502-A, Columbia, South Carolina 29201 or by e-mail to mmjohnso@ed.sc.gov. To be considered, comments must be received no later than 5:00 P.M., July 28, 2008, the close of the drafting period.

Synopsis:

The State Board of Education is considering promulgating amendments to Regulation 43-300, Accreditation Criteria. The amendments would update this regulation to comply with the Education Accountability Act that requires the State Board of Education to “consider including the function of school improvement councils and other school decision-making groups and their participation in the school planning process” S.C. Code Ann. § 59-18-710 (2008). The accreditation process will be based on input from broad-based stakeholder groups.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend R 43-130, Accreditation Standards Filed. Interested persons may submit comments to Dr. Marsha Johnson, Interim Director of the Office of Quality Assurance, Division of Accountability, SC Department of Education, 1429 Senate Street, Rutledge Building, Room 502-A, Columbia, South Carolina 29201 or by e-mail to mmjohnso@ed.sc.gov. To be considered, comments must be received no later than 5:00 P.M., July 28, 2008, the close of the drafting period.

Synopsis:

Acceptable Areas for Certification needs to be changed to read Required Credentials for Professional Staff Members in the Instructional Programs of South Carolina’s Public Schools. The accreditation standards for Palmetto Unified School District No.1 need to be updated. Other special schools accreditation standards may be updated.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-18-310, 59-18-320, 59-18-330, 59-18-340, 59-20-60(4)(c), and 20 U.S.C. 63601 et seq.

Notice of Drafting:

The State Board of Education proposes to amend R 43-262, Assessment Program. Interested persons may submit comments to Elizabeth Jones, Director of the Office of Assessment, Division of Accountability, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607-E, Columbia, South Carolina 29201 or by e-mail to jhair@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

The proposal amends R 43-262 to delete references to the BSAP, PACT, the readiness test, and a norm-referenced test which are no longer part of statute and to add the new assessment program due to the amendments to the Education Accountability Act (EAA).

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend R 43-231, Defined Program, Grades K–5. Interested persons may submit comments to Dr. Marsha Johnson, Interim Director of the Office of Quality Assurance, Division of Accountability, SC Department of Education, 1429 Senate Street, Rutledge Building, Room 502-A, Columbia, South Carolina 29201 or by e-mail to mmjohnso@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

State Department of Education (SDE) needs to be changed to South Carolina Department of Education, and the Office of Organizational Development no longer exists. This needs to be changed to the appropriate office. The SBE is considering other amendments to update this regulation to current state and federal legislation.

14 DRAFTING

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60, 59-18-110, 59-29-10 et seq.,
59-29-200 and 59-33-30

Notice of Drafting:

The State Board of Education proposes to amend R 43-234, Defined Program, Grades 9-12. Interested persons may submit comments to Elizabeth Jones, Director of the Office of Assessment, Division of Accountability, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607-E, Columbia, South Carolina 29201 or by e-mail to jhair@ed.sc.gov. To be considered, comments must be received no later than 5:00 P.M., July 28, 2008, the close of the drafting period.

Synopsis:

The Education Accountability Act of 1998 was reauthorized by the General Assembly during the 2008 legislative session. The reauthorization may necessitate changes to R 43-234, Defined Program Grades, 9-12.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend R 43.261, District and School Planning. Interested persons may submit comments to Nancy W. Busbee, PhD, Director of the Office of Federal and State Accountability, Division of Accountability, State Department of Education, 1429 Senate Street, Rutledge Building, Room 512-C, Columbia, South Carolina 29201 or by e-mail to nbusbee@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

The Education Accountability Act of 1998 was reauthorized by the General Assembly during the 2008 legislative session. The reauthorization may necessitate changes to Regulation 43.261.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION

CHAPTER 43

Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend State Board of Education Regulation 43-220, Gifted and Talented. Interested persons may submit comments to Suzette Lee, Director of the Office of Instructional Promising Practices, Division of Standards and Learning, State Department of Education, 1429 Senate Street, Rutledge Building, Room 1112, Columbia, South Carolina 29201 or by e-mail to slee@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

The State Board of Education proposes to amend Regulation 43-220, Gifted and Talented, to address concerns about the identification of students for gifted and talented programs and other issues raised by districts, schools, and parents by providing clarity and transparency to the regulation.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION**CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-5-60, 59-30-10(f), 59-39-100,
and 20 U.S.C. 6301 et seq.

Notice of Drafting:

The State Board of Education proposes to amend R 43-259, Graduation Requirements. Interested persons may submit comments to Elizabeth Jones, Director of the Office of Assessment, Division of Accountability, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607-E, Columbia, South Carolina 29201 or by e-mail to jhair@ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

The Education Accountability Act of 1998 was reauthorized by the General Assembly during the 2008 legislative session. The reauthorization may necessitate changes to R 43-259, Graduation Requirements.

Legislative review of this proposal will be required.

STATE BOARD OF EDUCATION**CHAPTER 43**

Statutory Authority: 1976 Code Sections 59-5-60 and 59-24-40

Notice of Drafting:

The State Board of Education proposes to amend R 43-165.1, Program for Assisting, Developing, and Evaluating Principal Performance. Interested persons may submit comments to Sally Barefoot, Director, Office of School Leadership, Division of Educator Quality and Leadership, State Department of Education, 3700 Forest Drive, Suite 300, Columbia, South Carolina 29204 or by e-mail to sbarefoot@leaders.ed.sc.gov. To be considered, comments must be received no later than 5:00 p.m., July 28, 2008, the close of the drafting period.

Synopsis:

The regulation for the Program for Assisting, Developing, and Evaluating Principal Performance (PADEPP) was approved by the General Assembly in June 2001. The national standards have been revised. The state standards will need to be reviewed to make sure they are in alignment with the national standards.

16 DRAFTING

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Section 59-5-60

Notice of Drafting:

The State Board of Education proposes to amend R 43-240, Summer School Programs. Interested persons may submit comments to Dr. Marsha Johnson, Interim Director of the Office of Quality Assurance, Division of Accountability, SC Department of Education, 1429 Senate Street, Rutledge Building, Room 502-A, Columbia, South Carolina 29201 or by e-mail to mmjohnso@ed.sc.gov. To be considered, comments must be received no later than 5:00 P.M., July 28, 2008, the close of the drafting period.

Synopsis:

The State Board of Education is considering promulgating amendments to R 43-240, Summer School Programs. The amendment would update this regulation to comply with current legislation and organization structure of the South Carolina Department of Education.

STATE BOARD OF EDUCATION
CHAPTER 43
Statutory Authority: 1976 Code Sections 59-1-445 and 59-1-447

Notice of Drafting:

The State Board of Education proposes to amend R 43-100, Test Security. Interested persons may submit comments to Elizabeth Jones, Director of the Office of Assessment, Division of Accountability, State Department of Education, 1429 Senate Street, Rutledge Building, Room 607-E, Columbia, South Carolina 29201 or by e-mail to jhair@ed.sc.gov. To be considered, comments must be received no later than 5:00 P.M., July 28, 2008, the close of the drafting period.

Synopsis:

The Education Accountability Act of 1998 was reauthorized by the General Assembly during the 2008 legislative session. The reauthorization may necessitate changes to R 43-100, Test Security.

Legislative review of this proposal will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Section 44-1-180

Notice of Drafting:

The Department of Health and Environmental Control proposes to amend R.61-29, Environmental Health Inspections and Fees. Interested persons may submit comments to H. Michael Longshore, Division of General Sanitation, Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201-1708. Comments submitted must be received by 5:00 p.m. on July 28, 2008, the close of the drafting comment period.

Synopsis:

R.61-29, Environmental Health Inspections and Fees, was promulgated with an initial effective date of June 26, 1992; to date, there have been no changes to this regulation. This regulation sets the inspection fee charged for environmental health inspections conducted by the Department in facilities regulated or licensed by other state agencies, including, but not limited to, child care facilities, foster homes, child residential care facilities, and spouse abuse shelters. Since the last revision, the cost of providing these inspections has increased significantly, so that the prescribed fee no longer covers the Department's cost to provide this service. Amendments will include language that allows the Department to set the fee at a level that will offset the cost of providing the service and conducting the inspections. Other amendments may be made to the regulation to clarify language.

This amendment will require legislative review.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 44-1-60 and 48-2-10 et seq.

Notice of Drafting:

The South Carolina Department of Health and Environmental Control (Department) proposes to amend S.C. Regulation 61-30, Environmental Protection Fees (R.61-30). Interested persons are invited to submit their views and recommendations in writing to Mr. Michael E. Rowe, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, written comments must be received no later than 5:00 p.m. on July 28, 2008, the close of the drafting comment period.

Synopsis:

The Department's Residential and Irrigation Well Permitting Program is requesting an increase to the individual residential and irrigation well fees. The fee increase is necessary to ensure the protection of the health of private well users in South Carolina by providing adequate funding to fully support the complete implementation of the program and coverage throughout the State.

The Department's Office of Environmental Laboratory Certification is requesting an increase to the laboratory certification fees. The fee increase is necessary to provide adequate funding to fully support the complete implementation of the Certification Program required by S.C. Regulation 61-81, State Environmental Laboratory Certification Regulation. This Regulation provides the mechanism to assure the validity and quality of the data being generated for compliance with State regulations.

18 DRAFTING

Additionally, the Department proposes to amend the appeals section of R.61-30 to comply with statutory changes in the Administrative Appeals process pursuant to S.C. Code Section 44-1-60 (2006 S.C. Acts 387).

Legislative review is required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL CHAPTER 61

Statutory Authority: 1976 Code Sections 44-1-60 and 44-93-10 et seq.

Notice of Drafting:

The Department of Health and Environmental Control is proposing to amend R.61-105, Infectious Waste Management Regulations. Interested persons may submit their views by writing to Richard Haynes, Director of the Division of Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on July 28, 2008, the close of the drafting comment period.

Synopsis:

The Department of Health and Environmental Control proposes to amend R. 61-105, South Carolina Infectious Waste Management Regulations. These Regulations were last amended June 24, 2005. Changes will be made to the Regulation to add or clarify definitions used in the Regulation. Amendments may include the embalming process as a potential source of regulated infectious waste and to set a treatment standard for this waste. An exemption from treatment facility permitting requirements may be considered for facilities whose only treatment of infectious waste is related to the embalming process and is performed for the purposes of meeting this standard. Allowances for alternate recordkeeping and communication will be developed for generators and transporters in regards to weight, biohazard placarding, and manifesting. Duplicated or outdated requirements will be deleted, including a continual refrigeration requirement and transporters' radiological monitoring. New requirements will be added for situations that could create a public health risk that have not been addressed in the past, including unattended vehicles carrying infectious waste and the storage and disposal of infectious waste treatment residue. Additionally, clarifications will be made to the Regulation to address the handling and treatment of sharps containers by small quantity generators.

Stylistic changes that may include corrections for internal consistency, clarification, references, and spelling will be made to improve the overall text of the regulation.

The Department also proposes to amend the appeals section of R.61-105 to comply with statutory changes in the Administrative Appeals process pursuant to S.C. Code Section 44-1-60 (2006 S.C. Acts 387).

Legislative review of this amendment will be required.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 44-1-140(3) and 44-1-150

Notice of Drafting:

The Department of Health and Environmental Control proposes to substantially amend R.61-34, Milk and Milk Products. Interested persons should submit comments to Jimmy Williamson, Division of Food Protection (Dairy Foods and Soft Drink/Bottled Water Protection Program), Bureau of Environmental Health, S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. 29201-1708. All comments must be received by 5:00 p.m. on July 28, 2008, the close of the drafting comment period.

Synopsis:

R.61-34 ensures that consumers are receiving safe, high quality, Grade "A" raw milk for human consumption; the regulation addresses sanitation standards for milk production facilities (including farms), and addresses food safety and packaging requirements associated with raw milk. The regulation was last amended in 1993. The proposed amendments will include food safety standards for raw milk, permit requirements, sampling and reporting requirements, laboratory sample testing fees, labeling standards, and enforcement procedures.

Stylistic changes that may include corrections for internal consistency, clarification, references, and spelling will be made to improve the overall text of the regulation.

The Department also proposes to amend the appeals section of R.61-34 to comply with statutory changes in the Administrative Appeals process pursuant to S.C. Code Section 44-1-60 (2006 S.C. Acts 387).

Legislative review of this proposal is required.

DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF OCCUPATIONAL SAFETY AND HEALTH
CHAPTER 71

Statutory Authority: 1976 Code Sections 41-3-40 and 41-15-210

Notice of Drafting:

The South Carolina Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health proposes to amend Regulations 71-400 through 71-410. Interested persons may submit comments to Gwendolyn Thomas, OSHA Technical Support Coordinator, S.C. Department of Labor, Licensing and Regulation, Office of Occupational Safety and Health, Post Office Box 11329, Columbia, S.C. 29211-1329.

Synopsis:

The Department of Labor, Licensing and Regulation proposes to amend current Regulations 71-400 through 71-410 to reflect recent amendments made to the South Carolina Occupational Safety and Health Act by 2008 Act 188. The proposed change will reflect the jurisdiction of the Administrative Law Court to review citations and notifications of failure to abate, with the associated abatement dates and proposed penalties.

20 PROPOSED REGULATIONS

Document No. 3224

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 48-1-10 et seq.

61-62. Air Pollution Control Regulations and Standards

Preamble:

The United States Environmental Protection Agency (EPA) promulgates amendments to 40 CFR Parts 60, 61, 63, 70, 72, and 96 throughout each calendar year. Recent Federal amendments include clarification, guidance and technical amendments regarding Standards Of Performance For New Stationary Sources, National Emission Standards For Hazardous Air Pollutants, and National Emission Standards for Hazardous Air Pollutants For Source Categories. Among the revisions being proposed are amendments to R. 61-62.60, South Carolina Designated Facility Plan and New Source Performance Standards (NSPS), R. 61-62.61, National Emission Standards for Hazardous Air Pollutants (NESHAP), R. 61-62.63, National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories, R. 61-62.70, Title V Operating Permit Program, R. 61-62.72, Acid Rain, and R. 61-62.96, Nitrogen Oxides (NO_x) and Sulfur Dioxide (SO₂) Budget Trading Program General Provisions, to incorporate recent Federal amendments promulgated during the period from January 1, 2007, through December 31, 2007. The Department also proposes to amend R. 61-62.1, Definitions and General Requirements, to incorporate amendments to the definition of Volatile Organic Compounds (VOCs) promulgated by the EPA on January 18, 2007; R. 61-62.5, Standard No. 2, Ambient Air Quality Standards, to respectively adopt the Federal change in the National Ambient Air Quality Standard (NAAQS) for the 24-hour primary standard for fine particulate matter (PM_{2.5}); make corrections to Standard No. 5 - Volatile Organic Compounds; and make regulation citation corrections to R. 61-62.5, Standard No. 3, Waste Combustion and Reduction, R. 61-62.5, Standard No. 3.1, Hospital/Medical/Infectious Waste Incinerators (HMIWI), and R. 61-62.70, Title V Operating Permit Program.

The proposed amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, are necessary to maintain consistency with Federal rules and make typographical corrections and clarifications to R.61-62 as necessary. Pursuant to S.C. Code Section, 1-23-120(G)(1), the proposed amendments will not require legislative review.

Two Notices of Drafting for these proposed changes were published in the State Register on March 28, 2008, and April 25, 2008. Notice of the Department's intent to draft these regulations was also published on the DHEC Regulatory Internet site in its DHEC Regulation Development Update. No comments were received. Since this amendment is consistent with Federal law, neither a preliminary fiscal impact statement nor a preliminary assessment report is required.

Discussion of Proposed Revisions:

SECTION CITATION/EXPLANATION OF CHANGE:

R. 61-62.1, Section I.94

Add "HFE-7300" to the definition of Volatile Organic Compounds.

R. 61-62.5, Std. No. 2

Amend Table to reflect changes in PM_{2.5} 24-hour standard.

R. 61-62.5, Std. No. 3, Section VI.D.3

Change regulation citation.

R. 61-62.5, Std. No. 3.1, Section VIII(k)
Change regulation citation.

R. 61-62.5, Std. No. 5, Section II.Part Q.2.a.(i)(a)(b)
Correct previous omissions.

R. 61-62.60
Tables in Subparts A, B, D, Da, Db, Dc, BB, VV, and GGG are amended to incorporate revisions.

R. 61-62.60
Subparts VVa and GGGa are added.

R. 61-62.61
Table in Subpart A is amended to incorporate revisions.

R.61-62.63
Tables in subparts A, E, T, HH, II, YY, DDDD, IIII and PPPP are amended to incorporate revisions.

R. 61-62.63.40(f)(2), (f)(3), (f)(4) and (f)(5)
Change regulation citation in Subpart B.

R. 61-62.63.41(n), (o), (p), (q), (r), and (s)
Add the definition of “organic HAP” and re-order corresponding sections in Subpart B.

R. 61-62.63
Subparts UUUUU, VVVVV, WWWWW, XXXXX, YYYYY, ZZZZZ, AAAAAA, BBBBBB, CCCCCC, DDDDDD, EEEEE, FFFFFF, GGGGGG, HHHHHH, IIIII, JJJJJ, KKKKKK, LLLLLL, MMMMMM, NNNNNN, OOOOOO, PPPPPP, QQQQQQ, RRRRRR, SSSSSS, and TTTTTT are added.

R. 61-62.70.2(r)(2)(xx)
Revise the definition of “chemical process plants.”

R. 61-62.70.7(d)(3)(iii)
Change regulation citation.

R. 61-62.72
Table in Subpart B is amended to incorporate revisions.

R. 61-62.96
Tables in Subparts AA, AAA, AAAA are amended to incorporate revisions.

R. 61-62.96.153(c)
Add text to clarify the process of recording CAIR NO_x allocations in Subpart FF.

R. 61-62.96.302
Add the definition of “Commence commercial operation” and correct/clarify the definitions of “Commence operation” (a), and “Fossil-fuel-fired” (b)(1) in Subpart AAAA.

R. 61-62.96.342(e)(2)
Add “s” in text in Subpart EEEE.

R. 61-62.96.353(c)
Add text to clarify the process of recording CAIR NO_x allocations in Subpart FFFF.

22 PROPOSED REGULATIONS

Notice of Staff Informational Forum and Public Comment Period:

Staff of the South Carolina Department of Health and Environmental Control invites interested members of the public to attend a staff-conducted informational forum to be held on July 28, 2008 at 10:00 a.m. in room 2380 at the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The purpose of the forum is to answer questions, clarify any issues, and receive comments from interested persons on the proposed amendments to Regulation 61-62, Air Pollution Control Regulations and Standards. Please use the Bull Street entrance.

Interested persons are also provided an opportunity to submit written comments to Maeve S. R. Mason at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201. To be considered, comments must be received no later than 5:00 p.m. on July 28, 2008, the close of the public comment period.

Comments received at the forum and/or during the public comment period by the deadline requested above will be considered in formulating the final proposed regulation for public hearing before the Board as noticed below.

Public comments received during the comment period above noticed shall be submitted to the Board of Health and Environmental Control in a Summary of Public Comments and Department Responses for consideration at the public hearing as noticed below.

Copies of the proposed regulation for public notice and comment may be obtained by contacting Maeve S. R. Mason at the South Carolina Department of Health and Environmental Control, Bureau of Air Quality, 2600 Bull Street, Columbia, SC 29201, or by calling (803) 898-2230. A copy may also be obtained on the Department's Regulatory Information Internet Site at <http://www.scdhec.gov/administration/regs/> in its DHEC Regulation Development Update. To access this document, click on the Air category, then scan down for this proposed amendment.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to comment on the proposed amendments to Regulation 61-62, Air Pollution Control Regulations and Standards at a public hearing to be conducted by the Board of the South Carolina Department of Health and Environmental Control at its regularly-scheduled meeting on October 9, 2008. The public hearing is to be held in room 3420 (Board Room) of the Commissioner's Suite, third floor, Aycock Building of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department twenty-four hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation to the Clerk of the Board for inclusion into the record of the public hearing.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan.

Purpose of Regulation: These amendments will maintain conformity with Federal requirements and ensure compliance with Federal standards.

Legal Authority: The legal authority for Regulation 61-62, Air Pollution Control Regulations and Standards, is S.C. Code Section 48-1-10 et seq.

Plan for Implementation: The proposed amendments will take effect upon approval and adoption by the South Carolina Board of Health and Environmental Control and publication in the State Register.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

Each year the United States Environmental Protection Agency (EPA) promulgates amendments to Federal regulations to include clarification, guidance and technical amendments. States are mandated by law to adopt these federal amendments. These amendments are reasonable as they promote consistency and ensure compliance with both State and Federal regulations.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions as a result of these amendments. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal law. The proposed amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

EPA has provided the estimated costs and benefits for these standards in the Federal Register notices that are cited within this document.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

Adoption of the recent changes in Federal law through the proposed amendments to Regulation 61-62, Air Pollution Control Regulations and Standards, and the South Carolina State Implementation Plan will provide continued protection of the environment and public health.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

While there is no specific detrimental effect on the environment and public health, the State's authority to implement Federal requirements, which are believed to be beneficial to the public health and environment, would be compromised if these amendments were not adopted in South Carolina.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

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Document No. 3225
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61
Statutory Authority: 1976 Code Section 44-56-30

61-79. Hazardous Waste Management Regulations

Preamble:

The Department proposes to amend R. 61-79, Hazardous Waste Regulations to adopt amendments promulgated by the US Environmental Protection Agency (US EPA) between July 1, 2006 and June 30, 2007. Adoption of federal amendments to 40 CFR 260 and 261 to R.61-79 will conform with the federal equivalent. The federal regulation amendment proposed for adoption affects the recycling of Cathode Ray Tubes. This rule was published at 71 FR 42928 on July 28, 2006.

These amendments will be less stringent than the previous federal equivalent and will modify the current state regulations. Adoption by states is optional. Although the changes in the regulations are federal initiatives, legislative review and a fiscal impact statement are required. Legislative review is required because, while the changes will not make South Carolina less stringent than federal initiatives, the changes will be less stringent than current South Carolina regulations.

A Notice of Drafting for the proposed amendments was published in the State Register on February 22, 2008. Notice was also published on the Department's Regulatory Information Internet site in its monthly Regulation Development Update, as well as on the DHEC Land and Waste Management Internet site. No comments were received.

Discussion of Proposed Revisions:

Revisions are made to conform R.61-79 to reflect modified federal amendments.

In addition to this section-by-section discussion of the proposed regulations, see Statement of Need and Reasonableness herein.

Section Citation and Explanation of change

260.10 - Add the following definitions which relate to the recycling and handling of Cathode Ray Tubes in alphabetical order.

Add "Cathode Ray Tube"

Add "CRT collector"

Add "CRT glass manufacturer"

Add "CRT processing"

261.4(a)(22) - Remove the reserved status at this citation and replace it with new section changes on the handling of Cathode Ray Tubes.

Before 261.38 add a new subpart: Title E - Exclusions/Exemptions

261.39

Add new title and text re: Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling, and text.

261.40

Add new title and introductory paragraph text re: Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) exported for recycling.

261.41

Add new title and text re: Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) exported for reuse.

Notice of Staff Informational Forum and Public Comment:

Staff of the Department of Health and Environmental Control invites interested members of the public and regulated community to attend a staff conducted informational forum to be held on Monday, July 28, 2008 at 10:00 a.m. in Room 1041 at the Stern Building at 8911 Farrow Road Suite 106. The purpose of the forum is to answer questions and to receive public comments from interested persons on the proposed amendment of R.61-79.

Interested persons are also provided an opportunity to submit written comments on the proposed regulation at the forum or during a public comment period by writing to Richard Haynes, Director, Division of Waste Management, 2600 Bull Street, Columbia, SC 29201. To be considered, written comments must be received no later than 5:00 p.m. on July 28, 2008, the close of the public comment period.

Information or copies of the proposed text for public notice and comment may be obtained at <http://www.scdhec.gov/lwm/html/public.html> or <http://www.scdhec.gov/administration/regs/> by calling Carolyn McLaughlin at (803) 896-4254.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendment of R.61-79 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly scheduled meeting on October 9, 2008. The public hearing will be held in the Board Room of the Commissioner's Suite, Third Floor, Aycock Building of the Department of Health and Environmental Control at 2600 Bull Street, Columbia, S.C. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The Board's agenda will be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes and, as a courtesy, are asked to provide written comments of their presentations to the Clerk of the Board for inclusion in the record of public hearing.

Preliminary Fiscal Impact Statement:

There will be minimal cost to the state and its political subdivisions. See Statement of Need and Reasonableness below.

Statement of Need And Reasonableness:

This Statement of Need and Reasonableness complies with S. C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Proposed amendment of R.61-79 Hazardous Waste Management Regulations.

Purpose: The purpose of this amendment is to maintain State consistency with modified regulations of the United States Environmental Protection Agency (EPA), which promulgated amendments to 40 CFR 260, 261 by the US EPA at 71 FR 42928 on July 28, 2006 publication in the Federal Register.

Legal Authority: South Carolina Hazardous Waste Management Act, S. C. Code Ann. Section 44-56-10 et seq. (2002 & Supp. 2007).

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Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, review by the General Assembly, and publication in the State Register as a final regulation, amended regulations will be provided in hard copy and electronic formats to the community at cost through the Department's Freedom of Information Office and at the Bureau web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

This rule provides modification of the Universal Waste program to streamline the management requirements for recycling of used Cathode Ray Tubes (CRTs) and glass removed from CRTs. The amendments exclude these materials from the RCRA definition of solid waste if certain conditions are met. This rule is intended to encourage handling of CRTs as commodities rather than as wastes and to promote the recycling of CRTs and reuse of used CRT glass.

DETERMINATION OF COSTS AND BENEFITS:

The regulation being proposed excludes previously regulated volumes of CRTs from the federal definition of solid and hazardous waste. The economic analysis calculates administrative, storage, transportation and disposal/recovery costs.

Estimated national volumes of CRTs subject to RCRA regulation are 16,100 tons of monitors under the Subtitle C baseline. Between 3,690 tons of CRTs would be diverted from export or hazardous waste landfill to CRT glass manufacturing under this rule. The estimated average savings for a previously regulated small quantity generator is \$755 per year and \$1740 per year for a previously regulated large quantity generator under this rule.

The estimated cost/economic impact of this rule could save CRT handlers \$3.5 million per year relative to the Subtitle C baseline. This cost savings comes from reduced administrative, transportation and disposal management cost.

Some of the benefits resulting from this rule include conservation of landfill capacity, increase in resource efficiency, growth of a recycling infrastructure for CRTs and possible reduction of lead emissions to the environment from CRT recycling. EPA estimates that nationally, there are approximately 3,690 tons or 545,000 cubic feet of CRTs per year would be redirected away from landfills towards recycling under the EPA's proposal. In addition, the use of processed CRT glass benefits the manufacturer in several ways, such as improving heat transfer and melting characteristics in the furnaces, lowering energy consumption, and maintaining or improving the quality of the final product. This rule will facilitate the growth and development of the CRT glass processing industry in the United States by reducing regulatory barriers to new glass processing firms becoming established. Finally, this rule will reduce lead emissions to the environment by diverting CRTs from municipal landfills and waste-to-energy facilities.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using the North American Industrial Classification system (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The small entity analysis conducted by EPA for this proposal indicates that streamlining requirements for CRTs would generally result in savings to affected entities. Under the full compliance scenario, the rule is not expected to result in a net cost to any affected entity. Thus, adverse impacts are not anticipated. This action will not have a significant economic impact on a substantial number of small entities.

See Preliminary Fiscal Impact Statement above for costs to the state and its political subdivisions.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The overall effects of this rule are expected to be beneficial to the public health and environment by promoting recycling and minimizing the hazardous waste stream. The adoption of this rule will reflect federal provisions in State law. The regulatory changes contained in the Cathode Ray Tubes final rule will have no negative impact on the many protections that EPA has established over the years for human health and the environment. Cathode Ray Tubes (CRTs) mean a vacuum tube, composed primarily of glass which is the video or visual display component of an electronic device (usually a computer or television monitor). CRTs would be considered commodities and excluded from the RCRA definition of solid waste if they were sent for recycling under certain conditions. Once the decision is made to dispose of them, the CRTs would be subject to requirements of 40 CFR part 262 and applicable land disposal restrictions (LDRs) under RCRA. They are then subject to RCRA hazardous waste determinations.

For CRTs to not be regulated as hazardous waste, certain criteria must be met. Intact CRTs could not be accumulated speculatively for longer than one year, they must be stored in a building with a roof, floor and walls. If they are not stored inside a building, they would have to be packaged and labeled under conditions identical to those proposed for used, broken CRTs prior to processing. EPA determined that intact CRTs are unlikely to release lead to the environment because the lead is contained in the plastic housing and the glass matrix. Other hazardous constituents sometimes present in CRT glass are mercury, cadmium and arsenic but these constituents are found in very low concentrations that are unlikely to exceed the Toxic Characteristic concentration limits. Broken CRTs must be stored in containers and labeled or marked clearly with "Used Cathode Ray Tubes-contains leaded glass" or "leaded glass from televisions or computers." Processed CRT glass (glass removed from CRTs) that is sent to a CRT glass manufacturer or a lead smelter must be processed in a building and no activities may be performed that uses temperatures high enough to volatilize lead.

Recyclers that intend to export Used CRTs (broken or intact) for recycling must provide a one-time notification of intent to export and requires getting written consent from the country to which the CRTs will be exported.

These requirements do not apply to CRTs generated by households or Conditionally Exempt Small Quantity Generators.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

EPA strongly recommends the adoption of this rule because if the minimum requirements specified under the regulations are not met, neither the facilities nor the Department can ensure that Used CRTs and mercury-containing equipment will be managed in a manner protective of human health and the environment.

Statement of Rationale:

Upon review of the final rules published by EPA in this regulation package, an administrative decision to adopt the CRT rule was made based on the assumption that the reduction in stringency would simplify the regulations without compromising human health and the environment.

This amendment reflects a change in current federal requirements, which the EPA encourages states to adopt, although states are not required to do so. This rule amends regulations under the Resource Conservation and Recovery Act (RCRA) to streamline management requirements for recycling of used CRTs and glass removed from CRTs. The amendment excludes the materials from the RCRA definition of solid waste if certain

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conditions are met. This rule is intended to encourage recycling and reuse of used CRTs and CRT glass. The proposed requirements for used CRTs and processed CRT glass would exclude these materials from the RCRA definition of solid waste if they were sent for recycling under certain conditions. The purpose of the proposed amendments is to encourage increased reuse, recycling, and better management of this growing waste stream, while maintaining necessary environmental protection. The conditions are intended to ensure that the materials are handled as commodities rather than as wastes.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 3226

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

CHAPTER 61

Statutory Authority: 1976 Code Sections 13-7-10 et seq., 13-7-40 and 13-7-45

61-64. X-rays (Title B)

Preamble:

Regulation 61-64, X-rays (Title B), is authorized by the Atomic Energy and Radiation Control Act at S.C. Code Ann. Section 13-7-10 et seq. and was last amended on June 27, 2003. This regulation provides for radiation control and applies to all persons who receive, possess, use, transfer, own, or acquire any x-ray producing machine. The cost of running the program to implement the provisions of this regulation is funded by the collection of fees from the regulated community as mandated by the Act.

As a result of the 2007 statutory five-year review of this regulation and due to advancing technologies in x-ray equipment and facilities that utilize x-ray equipment, the Department has determined it necessary to substantially amend R.61-64. Proposed changes will strengthen equipment performance standards. Language changes are being proposed that will result in clarifying many sections of the regulation by making them more specific, better organized, and the intent of the regulation more clear.

Although no increase in existing fees will be sought, the Department is proposing amendments to address an application fee for x-ray vendors. X-ray facilities that are located out-of-state that want to operate temporarily in the State of South Carolina will be required to meet the application and registration fee requirements. Also, a Mammography follow-up inspection fee is proposed with these revisions.

See Section-by-Section Discussion below and the Statement of Need and Reasonableness herein for more detailed information on the proposed amendments.

Section-by-Section Discussion of Proposed Revisions:

Part I - General Provisions.

R.61-64 RHB 1.2.3

This section was revised to change used for clarification of registering x-ray equipment with the Department. Text deleted "for any person". Text added "facility".

R.61-64 RHB 1.2.8

The section was revised to delete a requirement in the last sentence: "This prohibition does not apply to "mini" c-arms specifically designed to be hand held".

R.61-64 RHB 1.2.10 This Section was revised to add new wording to specify requirements for a Licensed Practitioner based on the South Carolina Department of Labor, Licensing, and Regulation.

R.61-64 RHB 1.2.14

This section was added to require all vendors that make, sell, lease, transfer, lend, repair or install x-ray equipment in South Carolina must ensure the equipment meets the requirements in the regulations. The vendor must also be registered with the Department.

R.61-64 RHB 1.3.4

A new subsection item was added to allow Department Inspectors to be on site and possibly present during an invasive x-ray procedure.

R.61-64 RHB 1.4.4

New subsections items were added to address all aspects related to Radiation Survey Instruments. Stipulations on operating range(s), calibration frequency that is traceable to a national standard, records of calibrations, procedures for operating the survey instrument, competence in using the instrument, and response checks are all addressed beginning in Section 1.4.4.

R.61-64 RHB 1.4.4.1

A new subsection subitem was added ensuring that the survey meter must have a minimum operating range consistent with the radiation field being measured.

R.61-64 RHB 1.4.4.2

A new subsection subitem was added requiring that the survey meter must be maintained annually.

R.61-64. RHB 4.4.2.1

A new subsection subitem was added requiring the survey meter to be calibrated at intervals not to exceed twelve months and after instrument servicing.

R.61-64 RHB 1.4.4.2.2

A new subsection subitem was added requiring the survey meter to be calibrated with an accuracy of twenty percent that is traceable to a national standard.

R.61-64 RHB 1.4.4.2.3

A new subsection subitem was added requiring the survey meter to be calibrated at two or more widely separated points, other than zero on each scale.

R.61-64 RHB 1.4.4.2.4

A new subsection subitem was added requiring the survey meter to be calibrated at energy levels encountered.

R.61-64 RHB 1.4.4.2.5

A new subsection subitem was added requiring that records of the calibrations must be maintained for inspection by this Department.

R.61-64 RHB 1.4.4.3

A new subsection subitem was added requiring written procedures be created and available for the proper operation of the survey meter.

R.61-64 RHB 1.4.4.3.1

A new subsection subitem was added requiring that the operator of the survey meter must adhere to the operating procedures.

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R.61-64 RHB 1.4.4.3.2

A new subsection subitem was added requiring the user of the instrument demonstrate competence with following these procedures.

R.61-64 RHB 1.4.4.3.3

A new subsection subitem was added requiring that documentation must be maintained and available indicating that the user has read, agrees, and will adhere to the operating procedures.

R.61-64 RHB 1.4.4.3.4

A new subsection subitem was added requiring that the procedures must include: inspection, battery check, check source, usage, operation, care, storage, and areas to be surveyed.

R.61-64 RHB 1.4.4.4

A new subsection subitem was added to require the survey meter to incorporate the use of a check source.

R.61-64 RHB 1.6.3

Additional wording to include vendors. This will ensure that the facility and vendor will provide the Department a listing of manufacture's specifications for x-ray equipment not specifically covered in these regulations.

R.61-64 RHB 1.6.4.2

Changed the word "Recommend" to "develop and implement". This change will enable the facility to ensure that they have an effective radiation safety program.

R.61-64 RHB 1.7.2

The numerical number 20 was added in conjunction with the written word of twenty.

R.61-64 RHB 1.8.1.2

Wording was deleted requiring the Department to send a certified letter to the facility when they fail to comply with the findings outlined in the inspection report. This would allow the Department to seek further enforcement actions if a facility failed to correct the violations.

R.61-64 RHB 1.8.1.3

In conjunction with subsection subitem 1.8.1.2, and to clarify the point that the facility must comply with the regulations, the words "certified letter" were deleted. The word "Regulations" was added.

R.61-64 RHB 1.8.1.3.1.2

Typographical error, duplicate numbers. Changed to subsection subitem 1.8.1.3.1.3.

R.61-64 RHB 1.8.1.3.1.3

For sequential numbering, subsection subitem 1.8.1.3.1.3 was changed to subsection subitem 1.8.1.3.1.4.

R.61-64 RHB 1.9.1

This is in reference to a facility complying with the regulations. Clarification change in wording. The word "observe" (these regulations) was deleted. The words "comply with" (these regulations) were added.

R.61-64 RHB 1.10.2.1

The word "and" was added for a grammatical change. Vertical cassette holders and tables were deleted. It is no longer necessary to maintain the model number and serial number of these devices.

R.61-64 RHB 1.10.2.4

For clarification the word “calibrations” was deleted. The word “equipment performance tests” were added. Additionally the facility can maintain records for five years, and additional wording with an option; “or the next Department inspection, whichever is later”.

R.61-64 RHB 1.10.3

Additional inventory requirements for facilities that possess more than ten x-ray machines. The new additions include model number, serial number, shielding acceptance number (if applicable), and date of the last equipment performance test.

R.61-64 RHB 1.11.1

New text allowing the x-ray registrants to send therapy misadministrations by fax or electronic mail.

R.61-64 RHB 1.13.3

This subsection item was revised to correct references to other section of this regulation.

R.61-64 RHB 1.13.4.1

Correction of typographical error. “Willfullness” corrected to “Willfulness”.

R.61-64 RHB 1.13.4.2.6, RHB 1.13.4.2.7, and RHB 1.13.4.2.8

These subsection subitems were revised to correct references to other sections of this regulation.

R.61-64 RHB 1.13.4.2.10

This subsection subitem was revised to correct references to other section of this regulation.

R.61-64 RHB 1.13.4.3 and RHB 4.13.4.4

These subsection subitems were revised to correct references to other sections of this regulation. Text was also revised for clarification of equipment performance tests and to correct grammatical errors. Text was added for clarification of healing arts screening programs.

R.61-64 RHB 1.1.16

Text added that is in line with the Agency Policy regarding the appeals process.

Part II - Registration Of X-Ray Machines And Services

R.61-64 RHB 2.3.1

This subsection item was revised to add text to clarify the application fee of this section refers to the facilities.

R.61-64 RHB 2.3.2

This subsection item was revised to change the word “approval” to “acceptance.”

R.61-64 RHB 2.3.3

A new subsection item was added to require a non-refundable vendor application fee of \$62.50 upon submission of a “Business Registration Approval Request” form. This provision was added to help recover the cost of the vendor review process.

R.61-64 RHB 2.3.4

A new subsection item was added to require a non-refundable out of state facility application fee of \$62.50 upon submission of an “Out of State Facility” form. This provision was added to help recover the cost of the out of state facility review process.

R.61-64 RHB 2.4.1.1.4, RHB 2.4.1.1.5 and RHB 2.4.1.1.6

These subsection subitems were revised to correct references to other section of this regulation.

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R.61-64 RHB 2.4.2.1.4 and RHB 2.4.2.1.5

These subsection subitems were revised to correct references to other section of this regulation.

R.61-64 RHB 2.4.2.1.7

This subsection subitem was revised to correct references to other section of this regulation.

R.61-64 RHB 2.4.3.1.4 and RHB 2.4.3.1.5

These subsection subitems were revised to correct references to other section of this regulation.

R.61-64 RHB 2.6.2.5

This subsection subitem was revised to clarify which vendor classes need to submit sample equipment performance test procedures and forms.

R.61-64 RHB 2.6.2.6

This subsection subitem was revised to clarify which vendor classes need to submit a sample shielding plan.

R.61-64 RHB 2.6.5

This subsection item was revised to clarify the DHEC forms to be submitted and to clarify what vendor changes must be submitted to the Department.

R.61-64 RHB 2.6.6.3.1 and RHB 2.6.6.3.2

These subsection subitems were revised to clarify vendor training requirements.

R.61-64 RHB 2.6.6.4.1 and RHB 2.6.6.4.2

These subsection subitems were revised to clarify vendor training requirements.

R.61-64 RHB 2.6.6.5.2

RHB 2.6.6.5.4 was renumbered to RHB 2.6.6.5.1 and was revised to clarify vendor-training requirements and to make wording consistent with other requirements of this part.

R.61-64 RHB 2.6.6.5.2

This subsection subitem was broken down into further subsection subitems to clarify vendor training requirements.

R.61-64 RHB 2.6.6.5.3

This new subsection subitem was moved from RHB 2.6.6.5.2 to better clarify vendor training requirements.

R.61-64 RHB 2.6.6.6.1

This subsection subitem was revised to clarify when a vendor is required to possess a radioactive materials license.

R.61-64 RHB 2.6.6.9.1 and RHB 2.6.6.9.2

These subsection subitems were revised to clarify vendor training requirements.

R.61-64 RHB 2.6.6.11

The text of RHB 2.6.6.11 was deleted in entirety to prevent persons not meeting vendor training requirements for a Class IX vendor to apply to the Department for equivalent training.

R.61-64 RHB 2.6.6.13

RHB 2.6.6.13 was renumbered to RHB 2.6.6.12 and references were revised.

R.61-64 RHB 2.7.1.4

This subsection subitem was revised to remove the ability of a vendor to be exempted from monthly reporting.

R.61-64 RHB 2.7.3.4

This subsection subitem was revised to require a legible signature of the service person on service records.

R.61-64 RHB 2.7.3.6

This subsection subitem was broken down into a title and subsection subitems to clarify records of equipment performance testing. Text was also added to require a legible signature of the service person, the serial and model number of the equipment, and the location of the equipment.

R.61-64 RHB 2.8

This title and text was revised to change “X-Ray Machines” to “Facilities” to be consistent with other parts of this regulation. Subsection subitems were revised to clarify the out of state facilities notification process. Text was also revised to require a five working day notification before the facility uses the machine in this state.

R.61-64 RHB 2.10.1

This subsection item was revised to require out of state facilities to pay an annual flat fee. This provision was added to help recover the cost of the out of state facility inspection process.

R.61-64 RHB 2.10.6

This subsection subitem was revised to add the text “and/or PET/CT Scanner” that addresses new technology.

This subsection subitem was also revised to require out of state facilities to pay an annual flat fee of \$156.25. This provision was added to help recover the cost of the out of state facility inspection process.

Part III - Standards For Protection Against Radiation

R.61-64 RHB 3.3

A heading was added to RHB 3.3 to clarify intent of the section on authority and responsibility for the Radiation Protection Program.

R.61-64 RHB 3.3.4

A new subsection item was added to provide responsibilities of the Radiation Safety Officer.

R.61-64 RHB 3.3.4.1

A new subsection subitem was added to provide responsibilities of the Radiation Safety Officer to include identification of radiation safety problems.

R.61-64 RHB 3.3.4.2

A new subsection subitem was added to provide responsibilities of the Radiation Safety Officer to include corrective actions.

R.61-64 RHB 3.3.4.3

A new subsection subitem was added to provide responsibilities of the Radiation Safety Officer to include termination.

R.61-64 RHB 3.3.4.4

A new subsection subitem was added to provide responsibilities of the Radiation Safety Officer to include implementation of corrective action.

R.61-64 RHB 3.3.5

A new subsection item was added to establish investigative limits on individual annual occupational exposure.

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R.61-64 RHB 3.4.1.3

A new subsection subitem was added to provide limitations when an individual exceeds their annual occupational exposure limit.

R.61-64 RHB 3.11

This section title was revised to delete “and Monitoring” since it is not accurate for this section.

R.61-64 RHB 3.12

A new section specific to personnel monitoring was added and parts of section 3.11 was moved to section 3.12.

R.61-64 RHB 3.12

RHB 3.12 was revised and renumbered to subsection to RHB 3.12.3 and revised to delete “Individual” since it is not necessary for clarity.

R.61-64 RHB 3.12.3.1

A new subsection subitem was added to delineate use of personnel monitoring devices.

R.61-64 RHB 3.12.3.1.1

A new subsection subitem was added to address assignment of personnel monitoring devices.

R.61-64 RHB 3.12.3.1.2

A new subsection subitem was added to address the location of the when a lead apron is worn.

R.61-64 RHB 3.12.3.1.3

A new subsection subitem was added to address a lost or damaged device.

R.61-64 RHB 3.12.3.2

A new subsection subitem was added to address the use of control badges.

R.61-64 RHB 3.12.3.3

A new subsection subitem was added to allow for the use of control badges in place of personnel monitoring devices.

R.61-64 RHB 3.12.4.1.3

This subsection subitem was revised to include fluoroscopic procedures as high or very high radiation areas.

R.61-64 RHB 3.12.4.1.3.1

A new subsection subitem was added to address use of personnel monitoring devices during any fluoroscopic procedure.

R.61-64 RHB 3.12.5

A heading was added to the subsection of RHB 3.12.5 and was broken down into subsection subitems to further clarify criteria for Determination of Dose.

R.61-64 RHB 3.12.5.1

A new subsection subitem was added to address the use of two monitoring devices and which device is the dose of record.

R.61-64 RHB 3.12.5.2

A new subsection subitem was added to address the use of an Effective Dose Equivalent upon Department consideration.

R.61-64 RHB 3.12.5.2.1

A new subsection subitem was added to address the documentation required for Department consideration of use of the Effective Dose Equivalent as the dose of record.

R.61-64 RHB 3.12.5.2.2

A new subsection subitem was added to require the submission and approval of the required documentation by the Department.

R.61-64 RHB 3.12.5.2.3

A new subsection subitem was added to address the revocation of approval of the use of the Effective Dose Equivalent as the dose of record.

R.61-64 RHB 3.12.5.3

A new subsection subitem was added to address adjustments to the dose of permanent record.

R.61-64 RHB 3.12.5

RHB 3.12.3 was renumbered to RHB 3.12.6 and revised to address the processing and evaluation of fetal badge.

R. 61-64 RHB 3.15.1

The subsection was revised to include the correct symbol.

R.61-64 RHB 3.17.3

A new subsection subitem was added to address the retention of records including legibility, format, and safeguards.

R.61-64 RHB 3.20.3.2

The subsection was revised to correct reference to incorrect form.

R.61-64 RHB 3.20.4

The subsection was revised to correct reference to incorrect form.

R.61-64 RHB 3.20.6

The subsection was revised to correct reference to incorrect form.

R.61-64 RHB 3.22.3

The subsection was revised to correct reference to incorrect form.

R61-64 RHB 3.24

This section was deleted in its entirety since it is addressed in a previous section subitem (RHB 3.17.3).

R61-64 RHB 3.26.2

RHB 3.26.2 was renumbered to RHB 3.25.2 and revised to clarify the content of the report of exposures and radiation levels exceeding the specified limits.

R61-64 RHB 3.26.2.1

RHB 3.26.2.1 was renumbered to RHB 3.25.2.1 and revised to address a description of the event.

R61-64 RHB 3.25.2.1.1

A new subsection subitem was added to include estimates of each individual's dose.

R61-64 RHB 3.26.3

RHB 3.26.3 was renumbered to 3.25.2.2 and revised to correct reference to a previous section.

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Part IV - Use Of X-Ray In The Health Professions

R.61-64 RHB 4.2.1

This subsection item was deleted in entirety since it is addressed in a previous section (2.6.1).

R.61-64 RHB 4.2.3.6

RHB 4.2.3.6 was renumbered to RHB 4.2.2.6 and revised to allow the registrant to post a notice to the public that certificates are available upon request.

R.61-64 RHB 4.2.3.7

RHB 4.2.3.7 was renumbered to RHB 4.2.2.7 and was revised to clarify acceptable documentation for facility specific training.

R.61-64 RHB 4.2.3.8

RHB 4.2.3.8 was renumbered to RHB 4.2.2.8 and references were revised.

R.61-64 RHB 4.2.6, RHB 4.2.6.1 and RHB 4.2.6.2 have been deleted to prevent the ability of the Department to waive compliance.

R.61-64 RHB 4.2.8.2

This subsection item was deleted to remove the requirement of stating the film or film screen combination used on the technique chart.

R.61-64 RHB 4.2.8.4

This subsection item was deleted to remove the requirement of stating the type and placement of patient shielding to be used.

R.61-64 RHB 4.2.8.5

This subsection item was deleted to remove the requirement of the technique charts with automatic exposure control to include the densities and detectors to be used.

R.61-64 RHB 4.2.8.6

RHB 4.2.8.6 was renumbered to RHB 4.2.6.4 and was revised to clarify technique chart requirements of AEC systems operated in manual mode. Text was revised to correct reference to other parts of this regulation.

R.61-64 RHB 4.2.9

RHB 4.2.9 was renumbered to RHB 4.2.7 and was revised to delete repetitive wording and the requirement of medical consideration for pregnant patients.

R.61-64 RHB 4.2.10

RHB 4.2.10 was renumbered to RHB 4.2.8 and was revised to include "and apparel" to the protective equipment requirements.

R.61-64 RHB 4.2.11.3

RHB 4.2.11.3 was renumbered to RHB 4.2.9.3 and was revised to change "patients" to "persons." Text was revised to change "0.25" to "0.5" to be consistent with other sections of this part.

R.61-64 RHB 4.2.12

RHB 4.2.12 was renumbered to RHB 4.2.10 and was revised to delete the word "human."

R.61-64 RHB 4.2.14.1

RHB 4.2.14.1 was renumbered to RHB 4.2.12.1 and was revised to delete the requirement of listing individual projections where holding devices cannot be used.

R.61-64 RHB 4.2.14.2

RHB 4.2.14.2 was renumbered to RHB 4.2.12.2 and was revised to change “safety” to “operating” to clarify the procedures and references were revised.

R.61-64 RHB 4.2.14.3

RHB 4.2.14.3 was renumbered to RHB 4.2.12.3 and references were revised.

R.61-64 RHB 4.2.14.4

RHB 4.2.14.4 was renumbered to RHB 4.2.12.4 and was revised to clarify patient holding requirements.

R.61-64 RHB 4.2.14.7

RHB 4.2.14.7 was renumbered to RHB 4.2.12.7 and was revised to delete the requirement of annual inspection and documentation of lead aprons. The Department has determined this was an unnecessary regulation.

RHB 4.2.15.3 was renumbered to RHB 4.2.13.3 and was revised to clarify mobile dental equipment is exempt from this requirement.

R.61-64 RHB 4.2.16.1.2

RHB 4.2.16.1.2 was renumbered to RHB 4.2.14.1.2 and references were revised.

R.61-64 RHB 4.2.17

RHB 4.2.17 was renumbered to RHB 4.2.15 and was broken down into a title and subsection subitems to clarify x-ray log requirements.

R.61-64 RHB 4.2.15.1

A new subsection subitem was added to require the x-ray log to contain the identification of the operator performing the examination.

R.61-64 RHB 4.2.15.2, RHB 4.2.15.3, RHB 4.2.15.4 and RHB 4.2.15.5

These new subsection subitems were moved from RHB 4.2.17 to better clarify x-ray log requirements.

R.61-64 RHB 4.2.18.1.3.1

RHB 4.2.18.1.3.1 was renumbered to RHB 4.2.16.1.3.1 and was revised to require dental x-ray equipment to be tested every two years.

R.61-64 RHB 4.2.18.4

RHB 4.2.18.4 was renumbered to RHB 4.2.16.4 and a heading was added. The regulation was also broken down into subsection subitems to clarify repeat analysis requirements.

R.61-64 RHB 4.2.16.4.1, RHB 4.2.16.4.2, RHB 4.2.16.4.3 and RHB 4.2.16.4.4

These new subsection subitems were moved from RHB 4.2.18.4 to better clarify repeat analysis requirements.

R.61-64 RHB 4.2.16.4.5

A new subsection subitem was added to allow single operator facilities to document repeat analysis in the patient log.

R.61-64 RHB 4.2.6.4.6

A new subsection subitems was moved from RHB 4.2.18.4 to better clarify repeat analysis requirements.

R.61-64 RHB 4.2.19.1.5

RHB 4.2.19.1.5 was renumbered to RHB 4.2.17.1.5 and was revised to clarify safelight requirements.

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R.61-64 RHB 4.2.19.1.5.1 and RHB 4.2.19.1.5.2

These subsection subitems have been deleted requiring facilities to have a safelight.

R.61-64 RHB 4.2.17.2.3

A new subsection subitem was added requiring documentation of chemical changes as recommended by the manufacturer.

R.61-64 RHB 4.2.19.2.3

RHB 4.2.19.2.3 was renumbered to RHB 4.2.17.2.4 and was revised to clarify safelight requirements.

R.61-64 RHB 4.2.19.2.3.1 and RHB 4.2.19.2.3.2

These subsection subitems were deleted in entirety that required facilities to have a safelight.

R.61-64 RHB 4.2.19.2.5

RHB 4.2.19.2.5 was renumbered to RHB 4.2.17.2.6 and was revised to delete the word "immediately."

R.61-64 RHB 4.2.19.2.7

RHB 4.2.19.2.7 was renumbered to RBH 4.2.17.2.8 and a heading was added. The regulation was also broken down into subsection subitems to clarify densitometric and sensitometric performance testing. The regulation was also revised to delete the requirement of facilities that process less than 250 films per day, but more than 250 films per week to perform testing on a weekly basis.

R.61-64 RHB 4.2.17.2.8.1, RHB 4.2.17.2.8.2, RHB 4.2.17.2.8.3, RHB 4.2.17.2.8.4, RHB 4.2.17.2.8.5 and RHB 4.2.17.2.8.6

These new subsection subitems were moved from RHB 4.2.19.2.7 to better clarify densitometric and sensitometric performance testing.

R.61-64 RHB 4.2.19.3.2

This subsection subitem was deleted in entirety that required darkrooms to have a positive method to prevent accidental injury.

R.61-64 RHB 4.3.1

This subsection item was revised to clarify warning labels.

R.61-64 RHB 4.3.1.1

A new subsection subitem was added to clarify warning labels.

R.61-64 RHB 4.3.2

This subsection item was revised to indicate battery-powered generators shall be adequately charged.

R.61-64 RHB 4.3.4

This subsection item was revised to clarify the requirements of capacitor energy storage equipment in standby status.

R.61-64 RHB 4.3.5

This subsection item was revised to delete specified dental units manufactured dates.

Table I

This table was revised to correct structural errors.

R.61-64 RHB 4.3.7

This subsection item was revised to move the requirement of indicators on the control and at or near the tube.

R.61-64 RHB 4.3.7.1

A new subsection subitem was added to clarify indicators on the control and at or near the tube.

R.61-64 RHB 4.3.9.1 and RHB 4.3.9.2

These subsection subitems were revised to clarify technique indicators.

R.61-64 RHB 4.3.12

A new subsection item was added to address imaging systems other than screen/film.

R.61-64 RHB 4.3.12.1

A new subsection subitem was added to require users of digital imaging systems to follow protocol established by the manufacturer of the digital imaging acquisition system.

R.61-64 RHB 4.3.12.2

A new subsection subitem was added to require that the manufacturer's current operating manual be available for Department review.

R.61-64 RHB 4.3.13

A new subsection item was added to allow the Department the ability to impose by rule, regulation, or order any requirements deemed appropriate or necessary to ensure appropriate and proper operation of any diagnostic x-ray system.

R.61-64 RHB 4.4

This section has been revised in entirety. Text has been rearranged to better clarify the shielding process. Text has been revised to change the words "approval" to "acceptance." References have been revised. Text has been added stating that x-ray equipment cannot be installed before a shielding plan has been accepted. Text has also been added to address the applicable fees as stated in RHB 2.3.2. References have been updated to be consistent with the National Council of Radiation Protection and Measurements, Report Number 145 and Report Number 147. Text has been deleted exempting installations where ordinary building materials are sufficient from survey requirements. Text has been added requiring any deviation from the accepted shielding plan shall be documented and evaluated for adequacy by a vendor. Text was deleted which allowed the replacement of an x-ray machine or generator without the submission of a new shielding plan. Text was added to allow Class VII and Class IX vendors to submit shielding plans. Text was added to allow Class V and Class VII vendors to perform area surveys. Text has also been added exempting Bone Density and Mammography units from "as-built" drawing requirements.

R.61-64 RHB 4.5.2.2

This subsection subitem was revised to add the text "position indication device."

R.61-64 RHB 4.5.3.3

This subsection subitem was revised to correct formula.

R.61-64 RHB 4.5.4.2.3

This subsection subitem was deleted in entirety. This removes the requirement of the operator to view the patient during all x-ray exams.

R.61-64 RHB 4.5.4.2.5

RHB 4.5.4.2.5 has been renumbered to RHB 4.5.4.2.4 and revised to clarify visual and/or audible indication of x-rays.

R.61-64 RHB 4.5.5

This subsection item was revised to correct formula.

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R.61-64 RHB 4.5.11.1

This subsection subitem was revised to refer to RHB 4.4.4.2 concerning shielding requirements.

R.61-64 RHB 4.5.11.3

This subsection subitem was revised to require pass throughs to be interlocked in a functional, permanent manner.

R.61-64 RHB 4.5.12.1

This subsection subitem was deleted in entirety. This requirement is addressed in previous parts of this regulation.

R. 61-64 RHB 4.5.12.2, RHB 4.5.12.3, RHB 4.5.12.4 and RHB 4.5.12.5

These subsection subitems remained and were renumbered.

R.61-64 RHB 4.6.6.1

This subsection subitem was revised to include reference to RBH 4.4 concerning shielding of cephalometric installations.

R.61-64 RHB 4.6.3 and RHB 4.6.3.1

The new subsection item and subsection subitem were added to address dental ct units. This requirement refers to RHB 4.11 ct x-ray systems.

R.61-64 RHB 4.6.3

RHB 4.6.3 was renumbered to RHB 4.6.4 and revised to delete "that is not a cephalometric or panoramic unit."

R.61-64 RHB 4.7.4.2.3, RHB 4.7.4.2.3.1, RHB 4.7.4.2.3.2 and RHB 4.7.4.2.3.3

These subsection subitems were deleted in entirety. The requirement for mobile and portable x-ray systems was revised for clarification and moved to RBH 4.8, Mobile Radiographic Equipment.

R.61-64 RHB 4.7.4.2.6.3

RHB 4.7.4.2.6.3 has been renumbered to RHB 4.7.4.2.5.3 and references revised.

R.61-64 RHB 4.7.4.2.6.5

RHB 4.7.4.2.6.5 has been renumbered to RHB 4.7.4.2.5.5 and references revised.

R.61-64 RHB 4.7.6

This subsection item was deleted in entirety. This subsection item outlines regulations from radiation capacitor energy storage units, which are no longer used in diagnostic settings.

R.61-64 RHB 4.7.7

RHB 4.7.7 was renumbered to RHB 4.7.6 and revised to correct grammatical error.

R.61-64 RHB 4.7.9.2

RHB 4.7.9.2 was renumbered to RHB 4.7.8.2 and references were revised.

R.61-64 RHB 4.7.13.4

RHB 4.7.13.4 was renumbered to RHB 4.7.12.4 and revised to delete reference to another part of this section.

R61-64 RHB 4.8.1

This subsection item was revised to correct reference to another section of this part

R.61-64 RHB 4.8.8

This subsection item was revised to delete “continually” from mobile used in a single location requirement.

R.61-64 RHB 4.8.9

This subsection item was revised to change “12” to “6” to be compatible with Federal standards.

R. 61-64 RHB 4.9.1.1, RHB 4.9.1.2, RHB 4.9.1.3 and RHB 4.9.1.4

These subsection subitems were revised to spell out numbers for clarity and to correct reference to another section of this part.

R61-64 RHB 4.9.4.3.6

This subsection was revised to correct reference to another section of this part.

R61-64 RHB 4.9.8.2.2

This subsection was revised to correct reference to another section of this part.

R.61-64 RHB 4.9.9.2

This subsection subitem was revised to correct formula.

R.61-64 RHB 4.9.9.3

This subsection subitem was revised to correct formula.

R.61-64 RHB 4.9.10

This subsection was revised to clarify the use of a mobile system as a stationary system.

R.61-64 RHB 4.9.12

This subsection was revised to correct reference to another part of this section.

R.61-64 RHB 4.9.13.7

This subsection subitem was revised to change “0.25” to “0.5” to be consistent with other parts of this regulation.

R.61-64 RHB 4.9.13.8.2

This subsection subitem was revised to correct formula.

R.61-64 RHB 4.9.13.8.3

This subsection subitem was revised to correct formula.

R.61-64 RHB 4.10.2.1

Text revised to delete shielding plan requirements from this section since it is addressed in a previous section.

R.61-64.4.10.2.2

This subsection subitem was revised to change “Mobile and portable” to “peripheral” for clarification of exempt units.

R.61-64 RHB 4.10.2.3

This subsection subitem was deleted in its entirety since shielding plan requirements are addressed in a previous section.

R.61-64 RHB 4.10.4.2

This subsection subitem was revised to correct reference to other parts of this regulation.

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R.61-64 RHB 4.10.4.3

This subsection subitem was revised to correct reference to a previous section of this part.

R.61-64 RHB 4.10.4.4

This subsection subitem was revised to correct reference to a previous section of this part.

R61-64 RHB 4.10.4.5

This subsection subitem was deleted in its entirety because the Department has determined this was an unnecessary regulation.

R.61-64 RHB 4.11.1.1.3

This subsection subitem was revised to delete specific ambient conditions.

R61-64 RHB 4.11.2.3

This subsection subitem was revised to text specific to the last revision date.

R61-64 RHB 4.11.2.3.1

A new subsection subitem was added to require all facilities to mark open areas within 12 months of the effective date of this revision.

R61-64 RHB 4.11.2.4

This subsection subitem was revised to change “the effective date of these regulations” to “May 25, 2001”, which is the actual effective date of the last revision.

R61-64 RHB 4.11.3.1.4

This subsection subitem regarding equipment performance tests was revised to be consistent with other sections of this part.

R61-64 RHB 4.11.4

This subsection subitem was deleted in its entirety since these items are addressed in other sections of this part.

R61-64 RHB 12.1

This section was revised to correct reference to other sections of this part.

R61-64 RHB 4.12.2

This subsection item was revised to correct reference to other sections of this part.

R61-64 RHB 4.12.3

This subsection item was revised to correct reference to other sections of this part.

R61-64 RHB 4.12.3.1

This subsection subitem was revised to clarify the use of human holders in a veterinary facility.

R61-64 RHB 4.12.3.2

This subsection subitem was revised to clarify the requirement regarding the use of ring badges in a veterinary facility.

R61-64 RHB 4.12.11.2.3

This subsection subitem was revised to correct formula.

R61-64 RHB 4.12.12

This subsection subitem was revised to correct formula.

R61-64 RHB 4.12.16.2

This subsection subitem was deleted in its entirety. Testing contrast ratios of collimator lights would be very tedious to test and has not been enforced since the current collimator light illuminance requirements are adequate.

R61-64 RHB 4.12.16.3

RHB 4.12.16.3 was renumbered to RHB 4.12.16.2 and was revised to delete “and 4.12.16.2” since this requirement for a specific collimator light ratio has been deleted.

R.61-64 RHB 4.12.18.6.2.2

This subsection subitem was revised to include all protective apparel.

R.61-64 RHB 4.12.20

This subsection subitem was revised to change “All provisions of RHB 4.11.1 through 4.11.15 apply” to “Where applicable, all provisions of RHB 4.11 apply” to clarify what provisions apply to veterinary CT systems.

R.61-64 RHB 4.12.20.1

This subsection subitem was deleted in its entirety since it was repetition of a previous section of this part.

R.61-64 RHB 4.12.20.2

This subsection subitem was deleted in its entirety since it was repetition of a previous section of this part.

R61-64 RHB 4.12.21

A new subsection subitem was added to regulate veterinary dental x-ray systems.

R61-64 RHB 4.12.21.2

RHB 4.12.21.2 was renumbered to RHB 4.12.22.2 and was revised to correct reference to other sections of this part.

R61-64 RHB 4.13

This is a new section added to the regulations addressing the requirements for Medical Specimen X-Ray Units.

R61-64 RHB 4.13.1

This subsection item is an administrative requirement referring to RHB 4.2.2.7, outlining radiation safety training.

R61-64 RHB 4.13.2

This subsection item outlines the requirements of the x-ray unit regarding radiation surveys and frequency of the surveys.

R61-64 RHB 4.13.3

This subsection item stipulates the testing of all safety devices on the x-ray unit.

R61-64 RHB 4.13.4

This subsection item outlines the maximum x-ray emitted on the external surface of the x-ray unit of 0.5 milliRoentgens per hour at any point five centimeters from the external surface.

R61-64 RHB 4.13.5

This subsection item requires the x-ray specimen unit to be secured when not in operation.

R. 61-64, Appendices

The Text “Part IV” was added to the title of each appendix.

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Part IV - Appendix B

Section was revised to change “approval” to “acceptance” to be more consistent with other sections of this part.

1.
Subsection item was revised to change “as” to “at” to establish minimum requirements.
- 1.c)
Subsection subitem was revised to change “The dimensions of the room(s) concerned.” to “A scale drawing of the room(s) concerned” to be more precise.
- 1.e)
Subsection subitem was revised to change “make and model” to “type” to be consistent with other parts of this regulation.
- 1.g)
Subsection subitem was revised to include requirements if the system is filmless.
2.
Subsection item was revised to be grammatically correct.
3.
Subsection item was revised to include “(workload)” as a point of clarification.
5.
A new subsection subitem was added to include specific requirements for individual barriers.

Part IV - Appendix C

- 3.a)
Subsection subitem was revised to exclude mammography equipment from this requirement.
4.
Subsection subitem was revised for grammatical accuracy. Text was changed from “should” to “shall” to require operator view of any entry to the room. Text was also revised to change “Appendix B” to “this Part” to include all sections of this Part.
5.
Text was revised to change “approval” to “acceptance” to be more consistent with other sections of this part.

Part IV - Appendix D

Medical

Section was revised to correct reference to an earlier section of this part.

Dental

Section was revised to correct reference to an earlier section of this part.

Part IV - Appendix F

Minimum Criteria for Performance Tests

Section was revised for clarification regarding the required content of the equipment performance test.

Section was revised to correct references to earlier sections of this part.

Section was revised to include additional requirements for the content and format of the equipment performance tests.

Medical Radiographic (Including veterinary facilities)

Subsection was revised to delete tests specific to capacitor discharge units since these units are obsolete.

Subsection was revised to delete "Screen-film contact" since no standards have been established for this test.

Subsection was revised to change "approved" to "accepted" to be consistent with other sections of this part.

Subsections were revised to correct references to other sections of this part.

Fluoroscopic

Subsection was revised to delete "kVp accuracy" since there is no standard in these regulations for this requirement.

Subsections were revised to correct references to other sections of this part.

Radiation Therapy Simulation Systems

Subsection was revised to delete "Screen-film contact" since no standards have been established for this test.

Subsections were revised to correct references to other sections of this part.

Subsection was revised to change "approved" to "accepted" to be consistent with other sections of this part.

Computed Tomography (CT) (Including CT treatment planning systems used in radiation therapy)

Subsections were revised to correct references to other sections of this part.

Subsection was revised to change "approved" to "accepted" to be consistent with other sections of this part.

Dental

Subsections were revised to correct references to other sections of this part.

Subsection was revised to change "approved" to "accepted" to be consistent with other sections of this part.

Part V - Quality Standards And Certification Requirements For Facilities Performing Mammography

R.61-64 RHB 5.2

Subsection item was revised since all facilities must now have a valid certificate issued by the Department.

R.61-64 RHB 5.3.5.1

This subsection subitem was revised to correct spelling error.

R.61-64 RHB 5.5.2

Subsection item was revised to indicate correct appeals process for a facility denied accreditation or reaccreditation.

R.61-64 RHB 5.5.4

Subsection item was revised to indicate correct Deputy area of the Department.

R.61-64 RHB 5.6.2

Subsection item was revised to remove reference to FDA certificates since SC DHEC is now a certifying state and issues all certificates.

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R.61-64 RHB 5.6.5

A new subsection item was added to require a follow-up inspection fee. This provision was added to recover costs of a follow-up inspection.

R.61-64.5 RHB 6.5.1

A new subsection item was added to require a follow-up inspection fee. This provision was added to help recover costs of a follow-up inspection.

R.61-64 RHB 5.6.5.2

A new subsection subitem was added to indicate issuance of the follow-up inspection fee invoice.

R.61-64 RHB 5.6.5.3

A new subsection subitem was added to include required time frame for payment of follow-up inspection fees.

R.61-64 RHB 5.7.1.3.1.1

A new subsection subitem was added to require facility records to include documentation of physician initial qualifications.

R.61-64 RHB 5.8.14

The subsection subitem was deleted in its entirety to ensure Mammography section is compatible with Federal requirements.

R.61-64 RHB 5.9.4.1

The subsection subitem was revised to correct reference.

R.61-64 RHB 5.11.1.1

The subsection subitem was revised to be compatible with Federal Mammography requirements.

R.61-64 RHB 5.11.4.3

The subsection subitem revised to be compatible with Federal Mammography requirements.

R61-64 RHB 5.11.4.3.1

The subsection subitem was deleted in its entirety to be compatible with Federal Mammography requirements.

R61-64 RHB 5.11.4.3.2

The subsection subitem was deleted in its entirety to be compatible with Federal Mammography requirements.

R.61-64 RHB 5.11.5.4

The subsection subitem was revised to correct formula.

R.61-64 RHB 5.11.5.5

The subsection subitem was revised to correct formula.

R61-64 RHB 5.18

This section item was revised to be grammatically correct.

R.61-64 RHB 5.24.3.1

The subsection subitem was revised to indicate correct Deputy area of the Department.

R. 61-64, Appendices

The Text "Part V" was added to the title of each appendix.

R.61-64, Part V - Appendix B

d)

The subsection item was revised to change “mases” to “masses”.

g)

The subsection item was revised to change “filin” to “film”.

j)

The subsection item revised to change “flbrils” to “fibrils”.

Part VI - Use Of Therapeutic Equipment

R.61-64 RHB 6.2.1

This subsection item was revised to move the requirement to RHB 6.23.2. The subsection item was revised to move requirement from RHB 6.2.2 to RHB 6.2.1 and to provide congruency with Part IV of this regulation and to clarify the vendor classes that may submit shielding plans.

R.61-64 RHB 6.2.2

This subsection item was revised to move requirements from RHB 6.2.2 to RHB 6.2.1, RHB 6.2.3.1, and RHB 6.2.4. These requirements were added to this subsection item to be consistent with Part IV of this regulation and to specify shielding requirements for therapeutic equipment.

R.61-64 RHB 6.2.3

This subsection item was revised to move requirements from RHB 6.2.3 to RHB 6.2.6 for organizational purposes. This subsection item was revised to add a heading.

R. 61-64 RHB 6.2.3.1

This subsection item was revised to move requirements from RHB 6.2.3.1 to RHB 6.2.6.1 for organizational purposes. This subsection item was revised to add text to be consistent with Part II of this regulation.

R.61-64 RHB 6.2.3.2

This subsection subitem was revised to move RHB 6.2.3.2 to RHB 6.2.6.2 for organization purposes. This subsection subitem was revised to move RHB 6.2.1 to RHB 6.2.3.2 and modified to reflect current national standards.

R.61-64 RHB 6.2.3.2.1

RHB 6.2.3.1 was moved in its entirety to RHB 6.2.6..1 for organizational purposes.

R.61-64 RHB 6.2.3.2.2

RHB 6.2.3.2.2 was moved in its entirety to RHB 6.2.6.2.2 for organizational purposes.

R.61-64 RHB 6.2.3.3

A new subsection subitem was added to be consistent with Part IV of this regulation.

R.61-64 RHB 6.2.3.4

A new subsection subitem was added to be consistent with Part IV of this regulation.

R.61-64 RHB 6.2.3.5

A new subsection subitem was added to be consistent with Part IV of this regulation.

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R.61-64 RHB 6.2.4

The subsection item was revised to address shielding plan requirements in the event that analysis of conditions indicate the possibility of an individual dose in excess of limits set in Part III of this regulation.

R.61-64 RHB 6.2.5

The subsection item was revised to address area surveys for therapeutic equipment.

R.61-64 RHB 6.2.5.1

A new subsection subitem was added to include the items that must be addressed on an area survey for therapeutic equipment.

R.61-64 RHB 6.2.5.2

A new subsection subitem was added to the timeframe for the submission of the area survey.

R.61-64 6.2.5.3

A new subsection subitem was added to require evaluation by a Class IX vendor of any deviation from an accepted shielding plan.

R.61-64 RHB 6.2.6

A new subsection item was added and RHB 6.2.3 was moved to RHB 6.2.6.

R.61-64 RHB 6.2.6.1

A new subsection subitem was added and RHB 6.2.3.1 was moved to RHB 6.2.6.1.

R.61-64 RHB 6.2.6.2

A new subsection subitem was added and RHB 6.2.3.2 was moved to RHB 6.2.6.2.

R.61-64 RHB 6.2.6.2.1

A new subsection subitem was added and RHB 6.2.3.2.1 was moved to RHB 6.2.6.2.1.

R.61-64 RHB 6.2.6.2.2

A new subsection subitem was added and RHB 6.2.3.2.2 was moved to RHB 6.2.6.2.2.

R.61-64 RHB 6.3.1.2

This subsection subitem was revised to correct inaccurate wording.

R.61-64 RHB 6.3.2.1.1.1

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.1.2

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.1.3

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.1.4

This subsection subitem was deleted in its entirety due to non-applicability in modern situations.

R.61-64 RHB 6.3.2.1.1.5

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.1.6

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.1.7

This subsection subitem was deleted in its entirety.

6.3.2.1.1.11

This subsection subitem was renumbered to RHB 6.3.2.1.1.4 and revised to correct reference to another part of this regulation.

R.61-64 RHB 6.3.2.1.1.12

This subsection subitem was renumbered to RHB 6.3.2.1.1.5 and was revised to clarify and remove requirements that no longer apply to modern equipment.

R.61-64 RHB 6.3.2.1.2

This subsection was revised to include RHB 6.3.2.1.2.1 and RHB 6.3.2.1.2.2.

R.61-64 RHB 6.3.2.1.2.1

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.2.1.2.2

This subsection subitem was deleted in its entirety.

R.61-64 RHB 6.3.3.1

This subsection subitem was revised to define a licensed practitioner.

R.61-64 RHB 6.3.3.8

This subsection subitem was revised to reflect the present SCRQSA practices.

R.61-64 RHB 6.3.3.9

This subsection subitem was revised to be consistent with other parts of this regulation.

R.61-64 RHB 6.3.4.3

A new subsection subitem was added and RHB 6.3.2.1.1.7 was moved to RHB 6.3.4.3.

R.61-64 RHB 6.3.4.4

A new subsection subitem was added and RHB 6.3.2.1.1.5 was moved to RHB 6.3.4.4.

R.61-64 RHB 6.3.6

A new subsection item was added and RHB 6.3.2.1.1.1 was moved to RHB 6.3.6.

R.61-64 RHB 6.3.7

A new subsection item was added and RHB 6.3.2.1.1.2 was moved to RHB 6.3.7.

R.61-64 RHB 6.4.1.1

This subsection subitem was revised to correct an error in numbering.

R.61-64 RHB 6.4.1.3.3

The subsection subitem was revised to change “the effective date of these regulations” to “May 25, 2001,” which is the effective date of the last revision and “RHB” was added for consistency with other parts of this regulation.

R.61-64 RHB 6.4.1.10

This subsection subitem was revised to delete “within one year of the effective date of these regulations” which is no longer applicable.

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R.61-64 RHB 6.4.1.10.6

The subsection subitem was revised to change “the effective date of these regulations” to “May 25, 2001,” which is the effective date of the last revision and “RHB” was added for consistency with other parts of this regulation.

R.61-64 RHB 6.4.2.2.3

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.3.4

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.4.3.3

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.4.3.4

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.4.3.5

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.4.3.7

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.4.4.4

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.1.2

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.3.2

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.3.3

The subsection subitem was revised to change “the effective date of these regulations” to “May 25, 2001,” which is the effective date of the last revision and “RHB” was added for consistency with other parts of this regulation.

R.61-64 RHB 6.5.4.2

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.4.4

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.4.4.2

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.5.3.6

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.11.3

The subsection subitem was revised to change “the effective date of these regulations” to “May 25, 2001,” which is the effective date of the last revision and “RHB” was added for consistency with other parts of this regulation.

R.61-64 RHB 6.5.14.7

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.5.15

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.1.2

This subsection subitem was renumbered to RHB 6.6.1.6 to correct a numbering error and was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.3.1

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.3.3

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.3.6

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.3.7

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.4.9

This subsection subitem was revised to add “RHB” for consistency with other parts of this regulation.

R.61-64 RHB 6.6.5

This subsection item was revised to add “RHB” for consistency with other parts of this regulation.

Part VII - Radiation Safety Requirements For Analytical X-Ray Equipment.

This Section has been renumbered in alphanumeric order.

R.61-64 RHB 7.1

Typographical correction, the word “part” was capitalized.

R.61-64 RHB 7.3

This section was revised to include requirements addressing hand held analytical x-ray equipment.

R.61-64 RHB 7.3.1

This subsection item was revised and text was added that specified operator training must be obtained and documented for the operation of Hand-Held Analytical X-Ray equipment.

R.61-64 RHB 7.3.2

A subsection item was added that requires Hand-Held Analytical X-Ray equipment have an interlock that prevents operation unless the x-ray exit port is in contact with or in close proximity to the item being irradiated.

R.61-64 RHB 7.3.3

A new subsection item was added that requires the equipment be operated in accordance with the manufacturer’s specifications.

R.61-64 RHB 7.3

Renumbered and changed to Section 7.4. Typographical correction, the word “All” was changed to “all”.

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R.61-64 RHB 7.3.5.1.2

Renumbered and changed to subsection subitem 7.4.5.1.2.

For improved clarification, unnecessary text regarding signage was deleted.

R.61-64 RHB 7.3.5.1.4

Renumbered and changed to subsection subitem 7.4.5.1.4.

Text changes. The word “Recorded” changed to “Documented”. The word “record:” changed to “documentation”. The word “should” changed to “shall”. Content reworded for improved clarification. Rewording entails documentation of any alteration to the x-ray equipment.

R.61-64 RHB 7.3.5.2

Renumbered and changed to subsection subitem 7.4.5.2.

Text, rewording, and consistency changes made. Includes all safety devices for the x-ray unit and the timeline for testing and documenting the safety devices.

R.61-64 RHB 7.3.5.3

Renumbered and changed to subsection subitem 7.4.5.3.

The word “protection” was changed to “area”.

R.61-64 RHB 7.3.6

Renumbered and changed to subsection item 7.4.6.

For hourly radiation leakage measurements, the wording was changed from “in any given”, to “per” hour.

R.61-64 RHB 7.3.7

Renumbered and changed to subsection item 7.4.7.

For protective cabinet limits, the wording was changed from “in any given”, to “per” hour.

R.61-64 RHB 7.3.8

Renumbered and changed to subsection item 7.4.8.

Text added regarding specific output limits for analytical x-ray equipment. If exceeded these limits must be reduced prior to using the x-ray equipment. Deleted text and moved to Section 7.4.9 for clarity.

R.61-64 RHB 7.4.9

A new subsection item outlining the stipulations involved with repair or modification of the x-ray tube system on analytical x-ray equipment. The x-ray tube must be off and remain off until safe conditions have been restored.

R.61-64 RHB 7.4.9

Renumbered and changed to subsection subitem 7.5.1.2.

For clarity the word “and” was deleted. “The reason each of these devices cannot be used”.

R.61-64 RHB 7.4.1.3

Renumbered and changed to subsection subitem 7.5.1.3.

To lead into a new requirement (7.5.1.4) the word “and” was added.

R.61-64 RHB 7.5.1.4

A new subsection subitem was added to require the facility to have a procedure for notifying the proper persons in the event of an accident.

R.61-64 RHB 7.5.7

A new subsection item was added that requires the registrant to develop and create written operating procedures for their analytical x-ray equipment. The Sections will stipulate what must be addressed in the written operating procedures. The procedures must cover personnel monitoring, access to radiation areas, securing the x-ray unit, pregnant employees, and training.

R.61-64 RHB 7.5.7.1

A new subsection subitem for a procedure for the use of personnel monitoring.

R.61-64 RHB 7.5.7.2

A new subsection subitem for a procedure for controlling access to radiation areas.

R.61-64RHB 7.5.7.3

A new subsection subitem for a procedure for locking and securing the x-ray unit.

R.61-64 RHB 7.5.7.4

A new subsection subitem for a procedure for pregnant employees.

R.61-64 RHB 7.5.7.5

A new subsection subitem for a procedure for training new employees.

R.61-64 RHB7.5.8 and RHB 7.5.8.1

This subsection and subsection subitem(s), outlines the operator training and competency requirements. These areas stipulate(s) training requirement in identification of radiation hazards, significance of radiation safety devises, proper operation of the x-ray equipment, proper operation of the survey instruments, characteristics of ionizing radiation, methods of controlling dose, units of dose, personnel monitoring use, symptoms of exposure, reporting of actual or suspected overexposure, understanding of specific parts in the regulations, and demonstration of competence.

R.61-64 RHB 7.5.8.1.1

Identification of radiation hazards associated with the use of the equipment.

R.61-64 RHB 7.5.8.1.2

Understanding of the various radiation warning and safety devices.

R.61-64 RHB 7.5.8.1.3

Proper operation of the x-ray equipment.

R.61-64 RHB 7.5.8.1.4

Proper operation of the survey meter.

R.61-64 RHB 7.5.8.1.5

Characteristics of ionizing radiation.

R.61-64 RHB 7.5.8.1.6

Methods of controlling radiation dose.

R.61-64 RHB 7.5.8.1.7

Units of radiation dose.

R.61-64 RHB 7.5.8.1.8

Use of personnel monitoring equipment.

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R.61-64 RHB 7.5.8.1.9

Symptoms of an acute localized radiation exposure.

R.61-64 RHB 7.5.8.1.10

Proper procedure for reporting an actual or suspected overexposure.

R.61-64 RHB 7.5.8.1.11

Understanding of the regulations contained in Part XII, and the applicable sections of Part III.
Understanding all the definitions in Part IX was removed.

R.61-64 RHB 7.5.8.2

Documentation of instruction and demonstration of competence must be maintained and available for review.

R.61-64 RHB 7.5

Renumbered and changed to Section 7.6.

For new equipment on the market, stationary, and mobile analytical x-ray units were included.

R.61-64 RHB 7.5.2

Renumbered and changed to subsection item 7.6.2.

Typographical error with the word “proper” changed to “properly”.

R.61-64 RHB 7.6.1

Renumbered and changed to subsection item 7.7.1.

Referral number for radiation dose limits changed due to renumbering.

R.61-64 RHB 7.6.2

Renumbered and changed to subsection item 7.7.2.

Referral number for radiations surveys changed due to renumbering.

R.61-64 RHB 7.6.2.7

Renumbered and changed to subsection subitem 7.7.2.7.

For clarity the word(s) “personnel” and “Radiation Protection Guides” were removed. This change states a monitoring device, to include all types, and comparing the readings from the previous monitoring period in order to evaluate the radiation dose limits.

R.61-64 RHB 7.6.3

Renumbered and changed to subsection item 7.7.3.

Text was added allowing a facility (if they can demonstrate compliance) to use an area monitor in lieu of an annual radiation survey. Stipulations on the placement change out, and documented results from the area monitor were included.

R.61-64 RHB 7.6.4

Renumbered and changed to subsection item 7.7.4.

Typographical error of the word “insure” was changed to “ensure”. Text was added to ensure that tests, inspection of safety devices, were “in accordance with RHB 1.10.2.4”.

R.61-64 RHB 7.6.5

Subsection item 7.6.5 was deleted due to referral number changes regarding excess radiation limits.

R.61-64 RHB 7.7

Renumbered and changed to Section 7.8

Text added regarding radiation survey instruments “All provisions of RHB 1.4.4 apply”.

R.61-64 RHB 7.7.1

Renumber and moved to subsection item 1.4.4. New subsection subitem number 1.4.4.1. Text changed to state, "shall have a minimum operating range consistent with the radiation field being measured".

R.61-64 RHB 7.7.2

For improved organization and flow of the regulation calibration requirement was moved to subsection subitem 1.4.4.2. Text changed to "shall be maintained annually".

R.61-64 RHB 7.7.2.1

Renumbered and moved to subsection subitem 1.4.4.2.1.

The survey meter must be calibrated at intervals not to exceed twelve months and after instrument servicing.

R.61-64 RHB 7.7.2.2

Renumbered and moved to subsection subitem 1.4.4.2.2.

The survey meter must be calibrated with an accuracy of twenty percent that is traceable to a national standard.

R.61-64 RHB 7.7.2.3

Renumbered and moved to subsection subitem 1.4.4.2.3.

The survey meter must be calibrated at two or more widely separated points, other than zero on each scale.

R.61-64 RHB 7.7.2.4

Renumbered and moved to subsection subitem 1.4.4.2.4.

The survey meter must be calibrated at energy levels encountered.

R.61-64 RHB 7.7.3

Renumbered and moved to subsection subitem 1.4.4.2.5.

Records of the calibrations must be maintained for inspection by this Department.

R.61-64 RHB 7.8.1

Renumbered and moved to subsection item 7.9.1.

For clarity, the word "Instruction" was changed to "Operator training". This requires the operator to receive instruction and demonstrate competence prior to operating, repairing or maintaining analytical x-ray equipment.

R.61-64 RHB 7.8.1.3

Renumbered and changed to subsection subitem 7.9.1.3.

Restating the requirement. The word "operating" was changed to "operation". The word "procedure" and "for." were deleted. Text was added to ensure that the proper operation of the equipment was done based on the manufacturer's guidelines and the registrant's written operating procedures.

R.61-64 RHB 7.8.1.4

This Section regarding radiation survey instruments was moved to subsection item 1.4.4.

R.61-64 RHB 7.8.1.5

Renumbered and changed to subsection subitem 7.9.1.4.

The word "x radiation" was changed to "ionizing radiation".

R.61-64 RHB 7.8.1.6

The units of radiation dose were moved to subsection item 7.5.8 under Operator training.

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R.61-64 RHB 7.8.1.7

Renumbered and changed to subsection subitem 7.9.1.5.

Text was added for clarity and establishing guidelines regarding personnel “and/or area” monitoring “if applicable”.

R.61-64 RHB 7.8.1.8

For improved organization, “symptoms of an acute localized exposure and” was moved to subsection item 7.5.8 under Operator training. New subsection subitem number is 7.5.8.1.9.

R.61-64 RHB 7.8.1.9

For improved organization, “Proper procedures for reporting an actual or suspected overexposure” was moved to subsection item 7.5.8 under Operator training. New subsection subitem number is 7.5.8.1.10.

R.61-64 RHB 7.8.1.10

For improved organization, the regulations contained in this Part, and the applicable sections of Part III were moved. The new subsection subitem number is 7.5.8.1.10.

R.61-64 RHB 7.8.3

Renumbered and changed to subsection item 7.9.3.

Text was added and deleted for clarity. The word “Operating” was added to state Operating Procedures. This Section instructs the registrant to create and make available to x-ray operators, written operating procedures.

R.61-64 RHB 7.9.3.1

New text added outlining the requirements of what is to be included with the written operating procedures for personnel and/or area monitoring.

R.61-64 RHB 7.9.3.2

New text added outlining the requirements of what is to be included with the written operating procedures for pregnant employees.

R.61-64 RHB 7.9.3.3

New text added outlining the requirements of what is to be included with the written operating procedures for training new employees.

R.61-64 RHB 7.9.2

Text moved for personnel monitoring devices to be assigned to and worn by one individual, moved to subsection subitem 3.12.3.1.1.

R.61-64 RHB 7.9.4

With this rewrite, this text is no longer applicable. Part III stipulates radiation dose values.

Part VIII -Radiation Safety Requirements For Industrial Uses Of Radiographic Sources.

This Section has been renumbered in alphanumeric order.

R.61-64 RHB 8.4

This Section refers to radiation survey instruments.

Text added regarding radiation survey instruments “All provisions of RHB 1.4.4 apply”.

R.61-64 RHB 8.4.1

Renumber and moved to subsection item 1.4.4.

A new subsection subitem number 1.4.4.1. Text changed to state, “shall have a minimum operating range consistent with the radiation field being measured”.

R.61-64 RHB 8.4.1.1

Renumbered and moved to subsection subitem 1.4.4.2.

Test changed from “shall be calibrated” to “shall be maintained annually”.

R.61-64 RHB 8.4.1.1.1

Renumbered and moved to subsection subitem 1.4.4.2.1.

The survey meter must be calibrated at intervals not to exceed twelve months and after instrument servicing.

R.61-64 RHB 8.4.1.1.2

Renumbered and moved to subsection subitem 1.4.4.2.2.

The survey meter must be calibrated with an accuracy of twenty percent that is traceable to a national standard.

R.61-64 RHB 8.4.1.2.3

Renumbered and moved to subsection subitem 1.4.4.2.3.

The survey meter must be calibrated at two or more widely separated points, other than zero on each scale.

R.61-64 RHB 8.4.1.1.4

Renumbered and moved to subsection subitem 1.4.4.2.4.

The survey meter must be calibrated at energy levels encountered.

R.61-64 RHB 8.4.1.2

Renumbered and moved to subsection subitem 1.4.4.2.5.

Records of the calibrations must be maintained for inspection by this Department.

R.61-64 RHB 8.4.1.3

Renumbered and moved to subsection subitem 1.4.4.4.

Each radiation survey meter must be checked with a source at the beginning of each day or work shift. Text added, “Document the radiation source check”.

R.61-64 RHB 8.6

New title for Registration and Posting requirements for industrial x-ray facilities and equipment.

R.61-64 RHB 8.6.1

Stipulates registration requirements for industrial facilities.

R.61-64 RHB 8.6.2

Posted areas for radiography usage are stipulated in Section 3.15.

R.61-64 RHB 8.7

Typographical correction the word Minimum “Personal” Radiation Safety Requirements was changed to “Personnel”.

R.61-64 RHB 8.7.1.3

Text changed in reference to demonstrating competency. The word “his” was changed to “the” assignment.

R.61-64 RHB 8.8.1

Text added regarding dose limits. Referring to the limits established in “Part III” of the regulations.

R.61-64 RHB 8.9.1

Typographical correction from the previous revision. The word “quarterly” was changed to “annually”. The registrant must inspect, and repair components associated with the radiation safety of the machines “annually”.

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R.61-64 RHB 8.10

For clarity, text regarding “Film badges (or other dosimeters approved by the Department) shall be:” was deleted. Text was added referring “Part III” as a reference that stipulates all the requirements regarding Personnel Monitoring.

R.61-64 RHB 8.10.1

For improved organization regarding Personnel Monitoring “assigned to and worn only by one individual; and” was move to Part III, subsection subitem 3.12.3.1.1.

R.61-64 RHB 8.10.2

For improved organization regarding the guidelines for a lost or damaged film badge or TLD was moved under Part III, subsection subitem 3.12.3.1.3.

R.61-64 RHB 8.12

Renumbered and moved to Section 8.6

“Posting” requirements. Posted areas for radiography usage are stipulated in Section 3.15.

R.61-64 RHB 8.13.1.9.5

Reference numbers in this part regarding signs indicating the meaning of the warning signals, legible, accessible to view, and illuminated have been changed. Subsection subitem 8.13.1.12.3, audible and visible warning signals, has been changed and corrected to Section 8.12.1.9.3. Subsection subitem 8.13.1.12, x-ray on visible warning signal, has been changed and corrected to subsection subitem 8.12.1.9.4 and subsection subitem 8.13.1.12.1, “ A control within the cabinet for preventing and terminating x-ray generation, which cannot be reset, overridden or bypassed from the outside of the cabinet”, has been changed and corrected to subsection subitem 8.12.1.9.1.

R.61-64 RHB 8.13.2.3

This subsection subitem was renumbered to RHB 8.12.2.3 and revised for grammatical accuracy.

R.61-64 RHB 8.13.2.4 through RHB 8.13.2.7

These subsection subitems are in reference to the requirements for shielding plans. These requirements are now addressed under subsection item RHB 4.4

R.61-64 RHB 8.12.4.3

A new subsection subitem requirement regarding radiation levels that will help to ensure that the local components of an industrial x-ray unit have sufficient shielding or access control such that no radiation in any area surrounding the component could result in a dose to an individual that exceeds the limits listed in subsection subitem 3.3.2.

Part IX – Definitions

R.61-64 RHB 9.41

Section was revised to correct formula.

R.61-64 RHB 9.118

A new section was added to define “Industrial x-ray equipment” and to give examples of such types of equipment.

R.61-64 RHB 9.154

RHB 9.154 was renumbered to RHB 9.156 and was revised to correct spelling error.

R.61-64 RHB 9.134

A new section was added to define “Licensed Practitioner,” as outlined by the South Carolina Department of Labor, Licensing, and Regulation.

R.61-64 RHB 9.223

RHB 9.223 was renumbered to RHB 9.225 and was revised to correct spelling error.

Part X -Notices, Instructions, And Reports To Workers: Inspections

R.61-64 RHB 10.5.5

The subsection subitem was revised to allow more than one worker to accompany an inspector as long as said workers comply with 10.5.6.

R.61-64 RHB 10.9

New section was added to clarify the provisions of the HIPAA as it pertains to these regulations.

Part XI - Regional Calibration Laboratory

R.61-64 RHB 11.2.1

Reworded to clarify the requirements of laboratory accreditation by the Conference of Radiation Control Program Directors.

R.61-64 RHB 11.2.2

This requirement stipulates that the South Carolina Regional Calibration Laboratory (SCRCL) will perform accredited procedures traceable to the National Institute of Standards and Technology.

R.61-64 RHB 11.2.2.1

This requirement stipulates that the SCRCL will perform yearly proficiency tests based upon the protocols of the National Institute of Standards of Technology.

R.61-64 RHB 11.2.3

Text added indicating that the SCRCL will follow the written operating procedures regarding all instruments entrusted to the SCRCL.

R.61-64 RHB 11.2.4

Reworded for clarification regarding contaminated instruments received at the South Carolina Regional Calibration Laboratory.

R.61-64 RHB 11.2.5

A new subsection item was added stipulating that each Geiger-Mueller, Ion Chamber, and R Meter will be calibrated at two points on each scale.

R.61-64 RHB 11.3.1

This Section, and list of fees associated with calibration services provided at the South Carolina Regional Calibration Laboratory was updated. There are no proposed fee increases related with this Section in the Regulations.

a) In this table the following wording “instrument Calibrated at 2 points on each scale” was deleted.

b) Since the Pic 6 instrument is considered an Ion Chamber it was removed from the pricing table.

c) 300Volt Battery was moved and placed under the breakdown of listed batteries carried at the SCRCL.

R.61-64 RHB 11.3.2

Text changed regarding shipping and insuring instruments. Charges will remain the same as the cost to the Department.

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R.61-64 RHB 11.3.3

Text updated for clarity regarding billing the client for calibrations and related calibration services.

Notice of Staff Informational Forum and Opportunity for Public Comment:

Staff of the Department of Health and Environmental Control invite interested members of the public and regulated community to attend a staff-conducted informational forum to be held on July 30, 2008, at 10:00 a.m. in the Peoples Auditorium, South Carolina Department of Health and Environmental Control (DHEC), 2600 Bull Street, Columbia, South Carolina. The purpose of the forum is to answer questions, clarify issues and receive formal comments from interested persons on the proposed amendments. Please use the front entrance of the building facing Bull Street if you plan to attend.

Interested persons are also provided an opportunity to submit written comments on the proposed amendments by writing to Charles G. Ditmer, Director, Bureau of Radiological Health, South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201. To be considered, comments must be received no later than 5:00 p.m. on July 30, 2008, the close of the public comment period.

A hard copy of the Notice of Proposed Regulation and text of the proposed regulations for public notice and comment may be obtained by contacting Charles G. Ditmer at South Carolina Department of Health and Environmental Control, Bureau of Radiological Health, Division of Electronic Products, 2600 Bull Street, Columbia, South Carolina 29201, or by calling 803-545-4400. Interested persons may also obtain a copy from the DHEC Regulation Development Update available on the Department's Regulatory Information Internet Site at <http://www.scdhec.gov/administration/regs/>. Click on the Update, then the Radiological Health Category.

Public comments received at the Forum and/or during the public comment period by the deadline date requested above will be considered in formulating the final proposed regulation for public hearing before the Board as noticed below.

Public comments received at the Forum and/or during the public comment period above-noticed shall be submitted to the Board of Health and Environmental Control in a Summary of Public Comments and Department Responses for consideration at the public hearing as noticed below.

Notice of Public Hearing and Opportunity for Public Comment:

Interested members of the public and regulated community are invited to make oral or written comments on the proposed amendments of R.61-64 at a public hearing to be conducted by the Board of Health and Environmental Control at its regularly-scheduled meeting on October 9, 2008. The public hearing will be held in Room 3420 (Board Room) of the Commissioner's Suite, Third floor, Aycock Building of the Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina. Please enter the building at the Bull Street entrance. The Board meeting commences at 10:00 a.m. at which time the Board will consider items on its agenda in the order presented. The order of presentation for public hearings will be noted in the Board's agenda to be published by the Department 24 hours in advance of the meeting. Persons desiring to make oral comments at the hearing are asked to limit their statements to five minutes or less, and as a courtesy are asked to provide written copies of their presentation to the Clerk of the Board for inclusion in the record of public hearing.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions with the implementation of these proposed amendments. This program is funded by the collection of fees from the regulated community as mandated by the Atomic Energy and Radiation Control Act. The Act requires the cost of running the program to be recovered through the collection of fees.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C) (1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: R.61-64, X-rays (Title B).

Purpose: The amendment will update the regulations pertaining to x-ray equipment and facilities that utilize x-ray equipment.

Legal Authority: R.61-64, X-rays (Title B) is authorized by the S.C. Code Ann. Section 13-7-10 et seq.; 13-7-40; 13-7-45.

Plan for Implementation: The proposed amendment of Regulation 61-64 will take effect upon approval by the Board of Health and Environmental Control, the General Assembly, and publication as a final regulation in the S.C. State Register. The proposed amendments will be implemented by providing the regulated community with copies of the regulation.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The changes are needed in order to update existing regulations due to technological advances. The proposed changes will strengthen equipment performance standard testing and ensure that the x-ray equipment is compatible with Federal equipment standards. The proposed language changes in the regulations will clarify many Sections and Parts of the regulations. Added new requirements will promote greater health and safety to the public, delete requirements that are no longer applicable, and make stylistic and grammatical changes.

The fees are needed and reasonable because the cost of running the program is authorized through collection of fees from the regulated community as mandated by statute.

DETERMINATION OF COSTS AND BENEFITS:

Cost to the State:

There will be no costs to the state and its political subdivisions with the implementation of these amendments. This program is funded by the collection of fees from the regulated community as mandated by the Atomic Energy and Radiation Control Act. This Act requires the cost of running the program to be recovered through the collection of fees.

Cost to the Regulated Community:

There are no existing fee increases proposed with these revisions. However, the Department is proposing a one-time new application fee of \$62.50 for x-ray vendors. This fee is considered minimal to offset the cost of application review and administrative costs.

Also, X-ray facilities that are located out-of-state, that want to operate temporarily in the State of South Carolina, will be required to meet the application and registration fee requirements. These requirements will include out-of-state facilities to pay a one-time application fee of \$62.50 and an annual registration fee of \$156.25. These fees are considered minimal to offset the cost of inspection, application review, and administrative costs.

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Also, a Mammography follow-up inspection fee of \$500.00 is proposed. Follow-up inspections for Mammography facilities are rare. In 2007, no Mammography follow-up inspections were needed. In 2006, there was only one follow-up needed. It should be noted that in the event the Food and Drug Administration were to conduct this follow-up Mammography inspection, the cost to the facility would be \$1,144.00. These additional fees will offset the recovery costs involved with review time, the classification process, and inspections.

UNCERTAINTIES OF ESTIMATES:

There are no known uncertainties of estimates.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect upon the environment. The amendments will have a positive effect upon the public health of the citizens of the state. The proposed revisions of R. 61-64 will clarify the intent of the overall regulation.

DETRIMENTAL EFFECTS ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

There will be no detrimental effects on the environment if these changes are not implemented. The public health of the citizens could possibly be affected if the new x-ray modalities that are being introduced on the market are not regulated.

Statement of Rationale:

As a result of the 2007 statutory five-year review of this regulation and advancing technologies in x-ray equipment and facilities that utilize x-ray equipment, the Department has determined it necessary to substantially amend R.61-64 to bring it up-to-date.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

Document No. 3223
PUBLIC SERVICE COMMISSION
 CHAPTER 103
 Statutory Authority: 1976 Code Section 58-3-140

103-114. Class “E” Motor Carrier - Certificate of Public Convenience and Necessity
 103-133(7)(A)(7). Drug Testing for Passenger Carrier Drivers
 103-199.5. Adjustment of Bills
 103-805. Representation

Preamble:

The Public Service Commission of South Carolina (Commission) proposes to amend its regulations related to transportation utilities by referencing the transportation of goods in portable storage units or containers within the definition of Class E Motor Carriers; requiring drug testing for passenger carrier drivers; and including provisions governing the adjustment of bills pertaining to household goods movers’ services. Additionally, the Commission seeks to create a regulation that governs the representation of parties before the Commission.

Section-by-Section Discussion

103-114. Class “E” Motor Carrier – Certificate of Public Convenience and Necessity. This regulation is amended to add that a Class “E” Motor Carrier includes, but is not limited to, a common carrier of property (household goods or hazardous waste for disposal) by motor vehicle by carrying goods in a portable storage unit or container.

103-133(7)(A)(7). Drug Testing for Passenger Carrier Drivers. This regulation is added to implement drug testing for passenger carrier drivers. The drug testing includes mandatory pre-employment, post-accident, and random drug screens.

103-199.5. Adjustment of Bills. This new regulation is proposed to provide for adjustment of bills related to household goods motor carriers and to govern adjustment of bills when customers are inadvertently overcharged, when customers are inadvertently undercharged, and when customers are willfully overcharged.

103-805. Representation. This new regulation is proposed to address representation of a party or parties who appear before the Commission.

Notice of Public Hearing and Opportunity for Public Comment:

Interested persons may submit written comments to the Public Service Commission, Docketing Department, 101 Executive Center Drive, Columbia, South Carolina 29210. Please reference Docket Number 2007-445-A. To be considered, comments must be received no later than 4:45 p.m. on August 1, 2008. Interested members of the public and the regulated community are invited to make oral or written comments on the proposed regulation at a public hearing to be conducted by the Public Service Commission on September 10, 2008 at 10:30 a.m. in the Commission’s Hearing Room, 101 Executive Center Drive, Columbia, South Carolina 29210.

Preliminary Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

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Statement of Need and Reasonableness:

This statement of need and reasonableness was determined pursuant to S.C. Code Ann. Section 1-23-115(C)(1) through (3) and (9) through (11).

DESCRIPTION OF REGULATIONS:

103-114. Class “E” Motor Carrier – Certificate of Public Convenience and Necessity.

103-133(7)(A)(7). Drug Testing for Passenger Carrier Drivers.

103-199.5. Adjustment of Bills.

103-805. Representation.

Purpose: The purpose of the revisions to 26 S.C. Code Ann. Regs. 103-114 is to include the transportation of household goods in a portable storage unit or container within the scope of a Class “E” Motor Carrier. Household goods can be transported via portable storage units or containers and the Commission seeks to update its regulations to reflect this practice. Next, the Commission, in an effort to protect the public safety and welfare, seeks to implement required drug testing for passenger carrier drivers (26 S.C. Code Ann. Regs. 103-133(7)(A)(7)). The purpose of 26 S.C. Code Ann. Regs. 103-199.5 is to provide rules for the adjustment of bills when a household goods customer is inadvertently overcharged or undercharged or willfully overcharged by a household goods carrier. Finally, the Commission hears cases related to jurisdictional utilities, thus parties appear before the Commission to present these cases. The purpose of 26 S.C. Code Ann. Regs. 103-805 is to provide guidelines to parties regarding legal representation.

Legal Authority: S.C. Code Ann. Section 58-3-140 (Supp. 2007)

Plan for Implementation: The proposed amendments will take effect upon approval by the General Assembly and publication in the State Register.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The inclusion of the transportation of household goods in a portable storage unit or container within the scope of the Class “E” Motor Carrier definition is necessary to clarify that these carriers are subject to the jurisdiction of the Commission and to provide the public with notice of these carrier’s Commission and the Office of Regulatory Staff-related duties and responsibilities. In an effort to protect the public safety and welfare, the Commission proposes to implement a regulation that requires drug testing for passenger carrier drivers. Additionally, to eliminate confusion and uncertainty when a household goods carrier has inadvertently or willfully overcharged or undercharged a customer, the proposed regulation expedites the resolution of complaints regarding bills to the extent that it provides guidelines to the motor carrier and the customer for the issuance of refunds or the recovery of deficient payments. The Commission needs a regulation governing legal representation regarding cases pending before the Commission so that entities involved are informed about the procedural and substantive issues related to legal representatives.

DETERMINATION OF COSTS AND BENEFITS:

Although costs related to amending 26 S.C. Code Ann. Regs. 103-114, 103-133(7)(A)(7), 103-199.5, and 103-805 are minimal, benefits include the amendment of a regulation that includes a motor carrier that is within the Commission’s jurisdiction; and the addition of regulations that protect the welfare and safety of the public; reduce confusion related to payment disputes that may arise; and provide rules for legal representation before the Commission.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

None.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The proposed regulations will have no detrimental effect on the environment and public health if the regulations are not implemented.

Statement of Rationale:

The bases for the proposed regulations include a specific reference to motor carriers that are within the Commission's jurisdiction; protecting the public welfare and safety by requiring drug testing for passenger carrier drivers; minimizing conflict regarding discrepancies on household goods motor carrier s' bills by providing guidelines for the adjustment of bills; and providing the public with notice regarding legal representation in cases before the Commission. There was no scientific or technical basis relied upon in the development of these regulations. It is the professional judgment of the Commission Staff that these regulations are needed in the interest of judicial economy and to provide the public with adequate notice of the Commission's procedures.

Text:

The full text of this regulation is available on the South Carolina General Assembly Home Page: <http://www.scstatehouse.net/regnsrch.htm>. Full text may also be obtained from the promulgating agency.

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Resubmitted: March 12, 2008

Document No. 3178
STATE BUDGET AND CONTROL BOARD
OFFICE OF RESEARCH AND STATISTICS
CHAPTER 19
Statutory Authority: 1976 Code Section 44-6-170

19-1030. Criteria for Data Submission Timeliness and Items Completeness and Accuracy
19-1040B(1). Penalties for Failure to Meet Timeliness, Completion and Accuracy Requirements

Synopsis:

The State Budget and Control Board, Office of Research and Statistics has amended the regulations that provide for establishing procedures and standards for reporting health care data from South Carolina outpatient facilities requiring a Certificate of Need. Such facilities include, but are not limited to hospitals, ambulatory surgery centers, home health agencies, providers of ambulatory services and other providers offering services with equipment requiring a Certificate of Need. The amendments will update the standards by which the above South Carolina health care providers submit health care data, requiring a monthly submission of data as opposed to a quarterly submission.

Section R.19-1030. Medical Record Extract Information addresses the data elements to be reported using *The Principles and Protocol for the Release of Health Care Data*, the electronic submission of data to the Office of Research and Statistics, establishes completeness, accuracy and timeliness criteria for data reporting, and a procedure for changing health care submissions to the Office of Research and Statistics. The amendment requires that data submission by health care providers must be done on a monthly basis; all references to a quarter of the calendar year have been changed to a month of the calendar year.

R.19-1040B(1). Penalties for Failure to Meet Timelines, Completion, and Accuracy Requirements establishes the process and penalties that may be assessed if a health care facility fails to meet the reporting requirements of these regulations. All references to a quarter of the calendar year have been changed to a month of the calendar year.

Instructions: Replace R.19-1030 Medical Record Abstract Information and R.19-1040B(1).

Replace in its entirety R.19-1030 with the following amendment.

Text:

19-1030. Criteria for Data Submission Timeliness and Items Completeness and Accuracy.

A. One record for each outpatient ambulatory encounter during the calendar month shall be submitted. Health care providers covered by these regulations shall submit at least ninety percent of their monthly ambulatory patient encounter records within forty-five days after the close of the month with exception made for conditions beyond the health care provider's control. Health care providers covered by these regulations shall submit one hundred percent of their patient encounter records within forty-five days after the close of the following month with exception made for conditions beyond the health care provider's control.

B. Reporting of required items shall meet ninety-nine percent item completeness.

C. Completed items shall meet ninety-nine and five-tenths percent accuracy as determined by edit specifications set by the Office of Research and Statistics.

D. Health care providers covered by these regulations changing hardware/software or processors which would necessitate a change in submission procedure shall:

(1) Notify the Office of Research and Statistics in writing at least sixty days prior to change and submit a test tape meeting completeness and accuracy requirements within one hundred twenty days after the change is accomplished,

(2) Make provisions for continued reporting of data during change/test period so that data submission complies with these regulations.

E. To insure complete reporting, each health care provider covered by these regulations shall submit monthly, in writing, to the Office of Research and Statistics within forty-five days of the close of the month, a report of the number of patient encounters during the month. The health care providers covered by these regulations shall report this information in a format specified by the Office of Research and Statistics and provided to health care providers thirty days prior to implementation of the format.

F. The Office of Research and Statistics will work with individual health care providers to incorporate the inclusion of data elements that are not currently coded into a standard data format during the modification period. The modification period will be for one year from the beginning submission date. See Section 19.1020. The modification period may be extended by Office of Research and Statistics based on changing federal reporting requirements.

Replace R.19-1040B(1) with the following amendment.

(1) First occurrence: the Office of Research and Statistics shall notify the health care provider by certified letter of failure to comply. The health care provider shall reply in writing as to the reasons for non-compliance and provide a summary of measures implemented to insure future compliance. Full compliance shall occur within two subsequent monthly submissions;

Fiscal Impact Statement:

The State Budget and Control Board, Office of Research and Statistics estimate that no additional costs will be incurred by the State of South Carolina or its political subdivisions.

Statement of Rationale:

Accuracy, completeness and timeliness of health care data are essential to ensure that submitted data reflect the care provided to patients. Requiring a monthly submission of health care data will improve the accuracy of data and shorten the time it takes the Office of Research and Statistics to finalize data. The more current the data is, the more useful it is to South Carolina's healthcare facilities and researchers.

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Document No. 3150
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Sections 44-56-10 et seq. and 44-56-30

61-79. Hazardous Waste Management Regulations

Synopsis:

The Department has amended R.61-79 parts 124, 260, 261, 264, 265, 266, 268 and 270 in order to adopt federal rules on the Headworks Exemption, Hazardous Waste Combustors, Phase I and II Final Replacement Standards, and the Burden Reduction Rule as well as the appeals procedure which will be revised to concur with S.C. Act 387 (2006). These rules were published in the Federal Register by the US EPA at 70 FR 57769 on October 4, 2005; 70 FR 59402 on October 12, 2005 and 71 FR 16862 on April 4, 2006.

The Headworks Exemption rule is designed to reduce unnecessary regulation of some low risk wastes. The Standards for Hazardous Air Pollutants for Hazardous Waste Combustors will shift regulation of hazardous air pollutants emissions to the Clean Air Act and away from RCRA regulation, eliminating redundancy. The Burden Reduction Rule will reduce recordkeeping, reporting and inspection requirements imposed on businesses and regulators. These changes streamline the regulatory process while still protecting public health and the environment.

These amendments will be less stringent than the previous federal equivalent and will relax the current state regulations. Adoption by states is optional. Legislative review is required because, while the changes will not make South Carolina less stringent than federal initiatives, the changes will be less stringent than current South Carolina regulations.

Discussion of Revisions:

These revisions will reduce unnecessary regulation of low risk wastes, streamline regulation of hazardous air pollution emissions currently regulated under both RCRA and the Clean Air Act and reduce recordkeeping reporting and inspection frequencies for businesses and state regulators. Revision of the appeal provisions is necessary pursuant to State Law

SECTION CITATION AND CHANGE:

State Act 387 (2006)

Changes passed in 2006 require the appeals language to be removed and replaced with new requirements.

124.19(a)-(c)

Remove all of 124.19(a)-(c). Add new Appeal of Permit language to correlate with changes in the administrative appeals process pursuant to Act 387 (2006).

Federal Register 70 FR 57769 Oct 4, 2005 Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures “Headworks Exemptions” Rule

261.3 (a)(2)(iv)(A),(B), (D), (F) & (G)

Revise definition of hazardous waste in (a)(2)(iv)(A), (B), (D), (F)&(G) to list spent solvents that will be allowed into the headworks of a facility’s wastewater treatment or pretreatment system as long as the solvent does not exceed specified limits. This section also lists other specific requirements for this exemption.

Federal Register 70 FR 59402 October 12, 2005 Final Standards for Hazardous Air Pollutants for Hazardous Waste

264.340(b)(1)

Revise the first sentence of paragraph (b)(1) to define what parts do not apply to new incinerators under RCRA, when an incinerator complies with maximum achievable control technology (MACT) requirements, and how to show compliance to MACT standards.

264.340 (b)(5)

Add paragraph (b)(5) to define another exception to the standards that apply to hazardous waste incineration units.

265.340 (b)(1)

Revise paragraph (b)(1) to define how an owner or operator can demonstrate compliance with MACT interim status standards.

266.100 (b)(1)

Revise the first sentence of paragraph (b)(1) to define exemptions to standards as they apply to a new hazardous waste boiler or industrial furnace and how to demonstrate compliance with MACT standards.

266.100(b)(3)& (b)(3)(i)-(iii) & (4)

Add paragraphs (b)(3) and (b)(3)(i)-(iii) to define standards to which boiler or hydrochloric acid production furnaces remain subject. Paragraph (4) defines the limitation that for boilers that elect to comply with the alternative to matter standard in 63.12.16(e) and .1217(e), the particulate matter standard of 266.105 remains in effect.

270.6(a)&(b)(1)&(2)

Revise paragraph (a) and (b) incorporation by reference updates. Add paragraph (b)(1)with APTI Course citation. Paragraph (b)(2) is reserved.

270.10(1)(1)(i)-(ix)&(2)

Replace paragraph (1) with new paragraph defining factors to protect human health and the environment if factors listed within paragraph (1) and its subparagraphs indicate that compliance with 40 CFR part 63 subpart EEE alone may not be protective of human health or the environment. Add paragraph (1)(1) and paragraphs (i) - (ix) defining specific factors that would require additional controls under RCRA. Paragraph (1)(2) is reserved.

270.19(e)

Revise paragraph (e) with Specific part B information requirements for incinerators to establish what is necessary to ensure compliance subject to a RCRA permit in addition to requirements under 40 CFR Part 63, subpart EEE.

270.22

Revise introductory text to define additional furnaces which become subject to RCRA permit requirements after October 12, 2005.

270.24(d)(3)

Revise paragraph (d)(3) which is Specific part B information requirements for process vents by deleting 260.11 and replacing with 270.6.

270.25(e)(3)

Revise paragraph (e)(3) which is Specific part B information requirements for equipment by changing reference specified by deleting 260.11 and replacing with 270.6.

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270.32(b)(3)

Add paragraph (b)(3) to establish specific permit conditions under RCRA.

270.42(j)(1)-(3)

Permit modifications at the request of permittee. Revise paragraph (j)(1) specifics for requesting a permit modification; renumber paragraph (j)(2) as (j)(3); add new paragraph (j)(2) defining when to file Notification of Intent to Comply for a permit modification for the purpose of technology changes.

270.42(k),(k)(1)(i)-(iv)

Add new paragraph (k) introductory text, (k)(1) and (k)(1)(i)-(iv) listing specific conditions to request a waiver of RCRA permit conditions in lieu of part 63 MACT standards.

270.42(k)(2)(i)-(ii)

Add new paragraph (k)(2) and (i)-(ii) to specify modifications in conjunction with MACT performance testing to request modifications under RCRA.

Appendix I to 270.42

Add "L. paragraph 10" to Appendix I of Section 270.42 - Classification of Permit Modification to define changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE).

270.62

Revise introductory text to clarify hazardous waste incineration unit permit requirements under RCRA.

270.66

Amend introductory text to provide specific incinerator requirements under RCRA.

270.235

Amend introductory text to add to the list of incinerators, kilns and boilers affected under this section.

270.235(a)(1)

Revise introductory text to 235(a)(1) to add types of boilers and furnaces included in revisions to permit conditions under RCRA after complying with MACT.

270.235(a)(2)

Revise introductory text to 235(a)(2) to add types of boilers and furnaces included in revisions to reissued permits under RCRA after complying with MACT.

270.235(b)(1)

Revise introductory text to 235(b)(1) to add types of boilers and furnaces included in revisions to interim status permits under RCRA after complying with MACT.

270.235(b)(2)

Revise introductory text to 235(b)(2) to add types of boilers and furnaces included in revisions to operations under a subsequent RCRA permit after complying with MACT.

270.235(c)

Add new paragraph (c) describing the type incinerators that are new units subject to RCRA.

270.235(c)(1)&(2)

Add new sections (1) & (2) to list options available to new units (1) to comply with 40 CFR 63.1206(c)(2); or (2) request conditions to be listed in a RCRA permit.

Federal Register 71 FR 16862 April 4, 2006 Resource Conservation and Recovery Act Burden Reduction Initiative

260.10 Definitions

In alphabetic order add the definition for “Performance Track and/or South Carolina Environmental Excellence member facility”.

260.31(b)(2)-(8)

Remove paragraph (b)(2) and renumber paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

261.4(a)(9)(iii)(E)

Revise paragraph (a)(9)(iii)(E) to define how to claim an exclusion under the Burden Reduction Rule and defines record keeping requirements.

261.4(f)(9)

Revise introductory text defining reporting requirements.

264.15(b)(4)

Revise paragraph (b)(4) to include reduced requirements for Performance Track and/or South Carolina Environmental Excellence member facilities.

264.15(b)(5)&(5)(i)-(iii)

Add paragraph (b)(5) defining requirements for reduced inspection frequency for Performance Track and/or South Carolina Environmental Excellence member facilities; add sections (i)-(iii) noting specific requirements and consequences of discontinuing membership as Performance Track and/or South Carolina Environmental Excellence member facilities.

264.16(a)(4)

Add new paragraph (a)(4) eliminating emergency response training under RCRA when facility employees emergency response training has been received pursuant to Occupational Safety and Health Administration (OSHA) regulations.

264.52(b)

Revise (b) to simplify requirements for one contingency plan which meets all regulatory requirements based on the National Response Team’s Integrated Contingency Plan Guidance (“One Plan”).

264.56(i)&(j)

Remove paragraph (i) and redesignate paragraph (j) as paragraph (i).

264.73(b)&(b)(1)&(2)

Revise paragraph (b) introductory text establishing time a facility operating record must be maintained; Revise paragraph (b)(1) and (2) to explain the exceptions to paragraph (b) in retention times required and what triggers the exceptions.

264.73(b)(6),(8)&(10) and by adding paragraphs (b)(18) & (b)(19)

Revise paragraphs (b)(6), (8) and (10) to define reduced requirements for operating records for monitoring, testing or analytical data and corrective action, record keeping times and exceptions to the requirements.

264.98(d), (g)(2),&(g)(3)

Paragraph (d) is amended providing greater flexibility in frequencies for collection of samples; Paragraph (g)(2) is amended to provide the Department with options for specific constituent sampling. Paragraph (g)(3) adds flexibility to the owner or operator ability to request an alternate sampling with Departmental approval.

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264.99

Revise paragraphs (f) and (g). In paragraph (f), replace "permit application" with Department; delete: "A sequence of at least four samples from each well (background and compliance wells) must be collected at least semiannually during the compliance period of the facility.

In paragraph (g), at the beginning of the paragraph add "Annually, the"; then modify the paragraph to define what the owner or operator must do to accomplish the new standards required to establish on a case by case basis when there are additional hazardous constituents and which sample collections must involve enhanced sampling, and how to comply with the new standards.

264.100(g)

Paragraph 100(g) Reporting of the effectiveness of the corrective action program is changed from semi annually to annually.

264.113(e)(5)

Paragraph 113(e)(5) "Closure, time allowed for closure" progress of the corrective action program reporting is changed from semiannually to annually.

264.115

Paragraph 115 "Certification of Closure", language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.120

Paragraph 120 "Certification of completion of postclosure care" language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.143(i)

Language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.145(i)

Language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.147(e)

Language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.174

The requirement for weekly inspections of containers is reduced to monthly for Performance Track and/or South Carolina Environmental Excellence member facilities and must follow procedures identified in 264.15(b)(5).

264.191(a) & (b)(5)(ii)

Language is changed from "an independent registered professional engineer" to "a qualified professional engineer" in both paragraphs.

264.192(a)&(b)

192(a) & (b) in the introductory text in both paragraphs, language is changed from "an independent registered professional engineer" to "a qualified professional engineer".

264.193(a)(1)

After the words "all new" the words "and existing" are added before the words "tank systems".

264.193(a)(2)-(5)

Remove paragraphs (a)(2)-(a)(4); renumber (a)(5) as (a)(2). Revise the newly designated (a)(2) by deleted references to the old (a)(2) - (a)(4) and establishing new schedule for inspection of tank containment and detection of releases.

264.193(i)(2)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer”.

264.195(b) & (1)-(3)

Delete (1)-(3). Incorporate language from (2) into introductory information of (b).

264.195(c)-(h)

Redesignate paragraphs (c) & (d) as paragraphs (g) & (h). Add new paragraphs (c) (1) & (2) and (d) through (f) setting forth specifics of details required in the inspection process and inspections schedules and in (e) providing relaxed schedule for Performance Track and/or South Carolina Environmental Excellence member facilities.

264.196(f)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer” and establishing retention schedule for Certification of major repairs report.

264.251(c)

Revise the introductory text to (c) by removing the phrases relating to construction.

264.280(b)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer”.

264.314(a)-(f)

Remove paragraph (a); renumber paragraphs (b) - (f) as (a)-(e); modify new paragraph (a) with landfill prohibitions of hazardous waste free liquids in landfills; revise paragraph (e) by removing old effective date.

264.343(a)(2)

Paragraph (a)(2) removes the language requiring notification to Department of intent to burn F020, F021, F022, F023 F026 or F027 hazardous wastes.

264.347(d)

Paragraph (d) is edited with retention schedule for monitory and inspection data added to the operating record.

264.554(c)(2)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer”.

264.571(a), (b)&(c)

Language is changed in all three paragraphs from “an independent registered professional engineer” to “a qualified professional engineer”.

264.573(a)(4)(ii)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer”.

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264.573(g)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

264.574(a)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer”.

264.1061(b)(1)-(3) &(d)

Removing paragraphs (b)(1) and (d); and, renumber paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2) eliminating notifications facilities must give Department.

264.1062(a)(1)&(2)

Remove paragraph (a)(2) and renumber paragraph (a)(1) as paragraph (a) eliminating notifications facilities must give Department.

264.1100

Modify paragraph eliminating old effective date.

264.1101(c)(2)&(4)

(c)(2) adds language instruction that certification must be kept on site and language is changed from “an independent registered professional engineer” to “a qualified professional engineer”; (c)(4) describes how the Performance Track and/or South Carolina Environmental Excellence member facility apply for reduced inspection frequency.

265.15(b)(4)&(5)(i)-(iii)

Provides for reduced inspection frequency for the Performance Track and/or South Carolina Environmental Excellence member facility.

265.16(a)(4)

Eliminates emergency response training pursuant to RCRA when employees have received emergency response training under OSHA.

265.52(b)

Add language that describes how owner or operator can develop one contingency spill plan which meets all regulatory requirements.

265.56(i)&(j)

Remove paragraph (i) and renumber paragraph (j) as paragraph (i) eliminating notification to the Department before operation can be resumed in the event of a spill.

265.73(b), (b)(1)-(2), (b)(6)-(8) and (b)(15)

Language added that describes what information must be kept in the operating record and for how long. Paragraph (15) is added further describing what data must be maintained in the operating record until the closure of the facility.

265.90(d)(1)&(3)

Both paragraphs (d)(1)&(3) eliminates the requirements to submit specific plans to the Department and changes the language to allow the plans to be maintained in the operating record of the facility until closure of the facility.

265.93(d)(2)&(5)

Both paragraphs (d)(2)&(5) eliminates the requirements to submit specific plans to the Department and changes the language to allow the plans to be maintained in the operating record of the facility until closure of the facility.

265.113(e)(5)

Owner/operator corrective action report schedules changed from semiannual to annual to the Department.

265.115

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.120

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.143(h)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.145(h)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.147(e)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.174

Reduced inspection frequency where containers are stored from weekly to monthly for Performance Track and/or South Carolina Environmental Excellence member facilities.

265.191(a)&(b)(5)(ii)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.192(a)&(b) intro

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

265.193(a)(2)-(4)

Remove paragraphs (a)(2)-(4); renumber (a)(5) as (a)(2); revise paragraph (a)(1) with the additions language “and existing” before tank systems; revise newly designated (a)(2) by removing old references and adding specific time frames.

265.193(i)(2)

Revise paragraph (i)(2) defining the type of tanks requiring inspection, who must conduct the leak test and language is changed from “an independent registered professional engineer” to “a professional engineer”.

265.195(a)

Revise paragraph (a) to add specifics of what data needs to be collected in the tank system inspections.

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265.195(b)-(e)

Renumber (b) and (c) as paragraphs (f) and (g); add new paragraphs (b) & (b) (1)-(3) defining specifics about tank inspections and frequencies;(c) discusses schedules for leak inspection; (d) provides a reduced inspection schedule for the Performance Track and/or South Carolina Environmental Excellence member facilities; and schedules for ancillary equipment inspections.

265.196(f)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer” as well as the change from submitting the inspections certification to the Department to placing it in the operating record maintained at the facility until closure.

265.201(c)-(h)

Revise paragraph (c) with exceptions to inspection schedule for facilities with 100-1,000 kg/month of hazardous waste stored in tanks; renumber (d)-(f) as paragraphs (f)-(h); add new paragraph (d) and (e). Paragraph (d) discusses specifics of leak detection between 100 and 1,000 kg/month of hazardous waste in tanks schedules and documentation, (e) adds a reduced inspection schedule for Performance Track and/or South Carolina Environmental Excellence member facilities.

265.221(a)

Paragraph (a) is revised removing old dates and detailing requirements for liners.

265.223

Renumber .223 as .224 “Response actions” and revise (a) of the renumbered paragraph defining requirements of surface impoundment units response action plans.

265.259(a)

Revise paragraph (a) with specifics of developing a response action plan and requiring the facility to keep the report on-site rather than having to submit it to the Department.

265.280(e)

Language is changed from “an independent registered professional engineer” to “a qualified professional engineer.

265.301(a)

Revise paragraph (a) deleting old dates.

265.303(a)

Revise paragraph (a) requiring the facility to develop a response action plan and keep the report on-site rather than having to submit it to the Department.

265.314(a)-(g)

Remove paragraph (a): renumber paragraphs (b)-(g) as (a)-(f); Revise the new paragraph (a) which defines special requirements for bulk and containerized liquids. Revise paragraph (f) to prohibit the placement of any liquid which is not a hazardous waste in a landfill.

265.441(a)-(c)

Each paragraph (a)-(c) is revised by adding language that is changed from “an independent registered professional engineer” to “a qualified professional engineer.

265.443(a)(4)(ii)&(g)

Paragraphs (a)(4)(ii) and (g) language is changed from “an independent registered professional engineer” to “a qualified professional engineer.

265.444(a)

Revise paragraph (a) by adding language that is changed from “an independent registered professional engineer” to “a qualified professional engineer.

265.1061(b)(1)&(d)

Remove paragraphs .1061(b)(1) and (d).

265.1061(b)(2) & (3)

Renumber paragraphs (b)(2) & (3) as paragraphs (b)(1) & (2).

265.1062(a)(1)&(2)

Remove paragraph (a)(2) and renumber paragraph (a)(1) as paragraph (a).

265.1100

Revise the introductory text to .1100 by removing old effective dates.

265.1101(c)(2)&(4)

Revise paragraph (2) by providing that certification is to be kept on-site, language is changed from “an independent registered professional engineer” to “a qualified professional engineer and removing old dates.; revise paragraph (4) by reducing requirements for Performance Track and/or South Carolina Environmental Excellence member facilities.

266.102(e)(10)

Revise paragraph (e)(10) changing the requirement for the operating record to be kept at the facility for five years rather than having to keep it until closure of the facility.

266.103(d)&(k)

Revise paragraph 103(d) changing the requirement for submission of recertification of compliance from three years to five years and paragraph (k) revises the recordkeeping requirements from closure of the boiler or industrial furnace to just five years.

268.7(a)(1)-(2) and (b)(6)

Revise paragraphs (a)(1) to define generator requirements for determining if a waste has to be treated before it can be land disposed and how this is done. Paragraph (2) provides directions to the generator if they chose not to make the determination of whether the waste must be treated which then must be determined by the treatment facility.

268.9(a)&(d)

Paragraph (a) is modified by adding the clarification to determination of the Hazardous Waste Number that must be determined by the initial generator of solid waste; revise (d) to no longer require generators to send notification and certification when the waste is no longer hazardous to the Department but the certification has to be kept in on-site files.

270.14(a)

In paragraph (a) language is changed from “an independent registered professional engineer” to “a qualified professional engineer.

270.16(a)

In paragraph (a) language is changed from “an independent registered professional engineer” to “a qualified professional engineer.

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270.26(c)(15)

In paragraph (c)(15) language is changed from “an independent registered professional engineer” to “a qualified professional engineer.”

270.42(1) &(1)&(2)

Each section in .42(1), (1)(1) and (1)(2) describe specific modifications to the regulations provided to the Performance Track and/or the South Carolina Environmental Excellence member facilities.

270.42 Appendix I

Add new entry O to the table in Appendix I “Classification of Permit Modification” providing reduced inspection frequency for Performance Track and/or the South Carolina Environmental Excellence Program member facilities.

Instructions: Amend Regulations R.61-79 parts 124, 260, 261, 264, 265, 266, 268, and 270 pursuant to each individual instruction provided below with the text of the amendments.

Text:

124.19 Replace all of 124.19(a)-(c) Appeal of Permit language to correlate with changes in the administrative appeals process pursuant to Act 387 (2006).

124.19 a. Department decision involving the issuance, denial, renewal, modification, suspension, or revocation of a permit, license, certificate or certification may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, Chapter 23; and Title 40, Chapter 61.

b. Any person to whom an order is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1; Title 1, chapter 23; and Title 40, Chapter 61.

260.10 Definitions - add the following definition in the appropriate place alphabetically.

“Performance Track and/or South Carolina Environmental Excellence Program member facility” means a facility that has been accepted by EPA/and/or the Department for membership in the National Environmental Performance Track Program and/or the South Carolina Environmental Excellence Program and is still a member of the Program. The National Environmental Performance Track and/or the South Carolina Environmental Excellence Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

260.31(b)(2) The extent to which the material is handled before reclamation to minimize loss;

(3) The time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(4) The location of the reclamation operation in relation to the production process;

(5) Whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(6) Whether the person who generates the material also reclaims it;

(7) Other relevant factors.

261.3 is amended by revising paragraphs (a)(2)(iv)(A), (a)(2)(iv)(B), (a)(2)(iv)(D), (a)(2)(iv)(F) and (a)(2)(iv)(G) to read as follows:

261.3(a)(2)(iv)(A) One or more of the following solvents listed in section 261.31 - benzene, carbon tetrachloride, tetrachloroethylene, trichloroethylene or the scrubber waters derived-from the combustion of these spent solvents--- Provided, that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pretreatment system does not exceed 1 part per million; or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act, as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 1 part per million on an average weekly basis. Any facility that uses benzene as a solvent and claims this exemption must use an aerated biological wastewater treatment system and must use only lined surface impoundments or tanks prior to secondary clarification in the wastewater treatment system. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the Department. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(B) One or more of the following spent solvents listed in Section 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents, 2-ethoxyethanol, or the scrubber waters derived-from the combustion of these spent solvents - provided that the maximum total weekly usage of these solvents (other than the amounts that can be demonstrated not to be discharged to wastewater) divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or the total measured concentration of these solvents entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 25 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file a copy of their sampling and analysis plan with the the Department as the context requires, or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

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(D) A discarded hazardous waste, commercial chemical product, or chemical intermediate listed in 261.31 through 261.33, arising from de minimis losses of these materials. For purposes of this paragraph (a)(2)(iv)(D), "de minimis" losses are inadvertent releases to a wastewater treatment system, including those from normal material handling operations (e.g., spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials); minor leaks of process equipment, storage tanks or containers; leaks from well maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing. Any manufacturing facility that claims an exemption for de minimis quantities of wastes listed in 261.31 through 261.32, or any nonmanufacturing facility that claims an exemption for de minimis quantities of wastes listed in subpart D of this part must either have eliminated the discharge of wastewaters or have included in its Clean Water Act permit application or submission to its pretreatment control authority the constituents for which each waste was listed (in 261 Appendix VII) of this part; and the constituents in the table "Treatment Standards for Hazardous Wastes" in 268.40 for which each waste has a treatment standard (i.e., Land Disposal Restriction constituents). A facility is eligible to claim the exemption once the permit writer or control authority has been notified of possible de minimis releases via the Clean Water Act permit application or the pretreatment control authority submission. A copy of the Clean Water permit application or the submission to the pretreatment control authority must be placed in the facility's on-site files; or

(F) One or more of the following wastes listed in 261.32 - wastewaters from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K157) - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine (including all amounts that cannot be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized) divided by the average weekly flow of process wastewater prior to any dilution into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 parts per million on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Department or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected; or

(G) Wastewaters derived-from the treatment of one or more of the following wastes listed in 261.32 - organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes (EPA Hazardous Waste No. K156). - *Provided*, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter OR the total measured concentration of these chemicals entering the headworks of the facility's wastewater treatment system (at facilities subject to regulation under the Clean Air Act as amended, at 40 CFR parts 60, 61, or 63, or at facilities subject to an enforceable limit in a federal operating permit that minimizes fugitive emissions), does not exceed 5 milligrams per liter on an average weekly basis. Facilities that choose to measure concentration levels must file copy of their sampling and analysis plan with the Department or an authorized representative. A facility must file a copy of a revised sampling and analysis plan only if the initial plan is rendered inaccurate by changes in the facility's operations. The sampling and analysis

plan must include the monitoring point location (headworks), the sampling frequency and methodology, and a list of constituents to be monitored. A facility is eligible for the direct monitoring option once they receive confirmation that the sampling and analysis plan has been received by the Department. The Department may reject the sampling and analysis plan if the Department finds that, the sampling and analysis plan fails to include the above information; or the plan parameters would not enable the facility to calculate the weekly average concentration of these chemicals accurately. If the Department rejects the sampling and analysis plan or if the Department finds that the facility is not following the sampling and analysis plan, the Department shall notify the facility to cease the use of the direct monitoring option until such time as the bases for rejection are corrected.

261.4 is amended by revising paragraphs (a)(9)(iii)(E) and (f)(9) introductory text to read as follows:

261.4(a)(9)(iii)(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Department for reinstatement. The Department may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

(f)(9) The facility prepares and submits a report to the Department by March 15 of each year, that includes the following information for the previous calendar year:

264.15 is amended by revising paragraph (b)(4)(the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) and (5)(i), (ii), and (iii) to read as follows:

264.15(b)(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that must inspect at least once each month, upon approval by the Department, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 where applicable.

(5) Performance Track and/or South Carolina Environmental Excellence Program member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Department. The modification request must identify the facility as a member of the National Environmental Performance Track Program and/or South Carolina Environmental Excellence Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track and/or South Carolina Environmental Excellence Program member facility, and that within seven calendar days of ceasing to be a Performance Track and/or South Carolina Environmental Excellence Program member, the facility will revert to the non-Performance Track and/or non-South Carolina Environmental Excellence Program inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Department will notify the Performance Track and/or South Carolina Environmental Excellence Program member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The

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Performance Track and/or South Carolina Environmental Excellence Program member facility should consider the application approved if the Department does not: deny the application; or notify the Performance Track and/or South Carolina Environmental Excellence Program member facility of an extension to the 60-day deadline. In these situations, the Performance Track and/or South Carolina Environmental Excellence Program member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track and/or South Carolina Environmental Excellence Program member facility that discontinues their membership or is terminated from the program must immediately notify the Department of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track and/or South Carolina Environmental Excellence Program inspection frequencies within seven calendar days.

264.16 is amended by adding new paragraph (a)(4) to read as follows:

264.16(a)(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

264.52 is amended by revising paragraph (b) to read as follows:

264.52(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, or part 1510 of Chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i), items (1) through (7) in newly designated paragraph (i) are unchanged.

264.56(i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Department. The report must include:

264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

264.73(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F and 264.19,

264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), 264.1064, and 264.1082 through 264.1090. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

(8) All closure cost estimates under 264.142, and for disposal facilities, all postclosure cost estimates under 264.144. This information must be maintained in the operating record until closure of the facility.

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 268.5, a petition pursuant to 268.6, or a certification under 268.8, and the applicable notice required by a generator under 268.7(a). This information must be maintained in the operating record until closure of the facility.

(18) Monitoring, testing or analytical data where required by 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by 264.196(f) must be maintained in the operating record until closure of the facility.

264.98 is amended by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

264.98(d) The Department will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with 264.97(g).

(g)(2) Immediately sample the groundwater in all monitoring wells and determine whether constituents in the list of Appendix IX are present, and if so, in what concentration. However, the Department, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list and other representative/related waste constituents.

(3) For any Appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site specific schedule approved by the Department and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial Appendix IX analysis will form the basis for compliance monitoring.

264.99 is amended by revising paragraphs (f) and (g) to read as follows:

264.99(f) The Department will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with 264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in 264.98(f). To accomplish this, the owner or operator must consult with the Department to determine on a case by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the groundwater that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Department, and repeat the analysis. If the second analysis confirms the presence of new constituents, the

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owner or operator must report the concentration of these additional constituents to the Department within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Department within seven days after completion of the initial analysis, and add them to the monitoring list.

264.100 is amended by revising paragraph (g) to read as follows:

264.100(g) The owner or operator must report in writing to the Department on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

264.113 is amended by revising paragraph (e)(5) to read as follows:

264.113(e)(5) During the period of corrective action, the owner or operator shall provide annual reports to the Department describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action.

264.115 is revised to read as follows:

264.115 Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Department by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until he releases the owner or operator from the financial assurance requirements for closure under 264.143(i).

264.120 is revised to read as follows:

264.120 No later than 60 days after completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until it releases the owner or operator from the financial assurance requirements for postclosure care under 264.145(i).

264.143 is amended by revising paragraph (i) to read as follows:

264.143(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

264.145 is amended by revising paragraph (i) to read as follows:

264.145(i) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the postclosure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the

Department will notify the owner or operator that he is no longer required to maintain financial assurance for postclosure of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

264.147 is amended by revising paragraph (e) to read as follows:

264.147(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

264.174 is revised to read as follows:

264.174 At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that may conduct inspections at least once each month, upon approval by the Department. To apply for reduced inspection frequencies, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures identified in 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

264.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

264.191(a) For each existing tank system that does not have secondary containment meeting the requirements of 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with R.61-79.270.11(d), that attests to the tank system's integrity by January 12, 1988.

(b)(5)(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with R.61-79.270.11(d), that addresses cracks, leaks, corrosion, and erosion.

264.192 is amended by revising paragraph (a) introductory text and paragraph (b) introductory text, items following introductory paragraphs (a) and (b) are unchanged.

264.192(a) Owners or operators of new tank systems or components must obtain and submit to the Department at time of submittal of Part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with R.61-79.270.11(d) attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Department to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

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(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems or components, must inspect the system for the presence of any of the following items:

264.193 is amended by: removing paragraphs (a)(2) through (a)(4); redesignating (a)(5) as (a)(2); revising paragraphs (a)(1), newly designated (a)(2), and (i)(2) to read as follows:

264.193(a)(1) For all new and existing tank systems or components, prior to their being put into service;

(2) For tank systems that store or treat materials that become hazardous wastes—within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(i)(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

264.195 Revise paragraph (b) (the note to paragraph (b) is unchanged); redesignate existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively, items 1 and 2 and the note in newly designated paragraph (g) are unchanged; adding new paragraphs (c) through (f)

264.195(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (*e.g.*, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (*e.g.*, dikes) to detect erosion or signs of releases of hazardous waste (*e.g.*, wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track and/or South Carolina Environmental Excellence Program member facilities may inspect on a less frequent basis, upon approval by the Department, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in 264.193(f)(1) through (4), must be inspected at least once each operating day.

(g) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(h) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) through (c) of this section.

264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

264.196(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with R.61-79.270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

264.251 is amended by revising the introductory text to paragraph (c) to read as follows, items (c)(1) and following are unchanged:

264.251(c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

264.280 is amended by revising paragraph (b) to read as follows

264.280(b) For the purpose of complying with 264.115, when closure is completed the owner or operator may submit to the Department certification by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

264.314 is amended by: removing paragraph (a); redesignating paragraphs (b) through (f) as paragraphs (a) through (e), items in newly designated paragraphs (c), (d), and (e) are unchanged; and, revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:

264.314(a) The placement of bulk or non containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in R.61-79.260.11.

(c) Containers holding free liquids must not be placed in a landfill unless:

(d) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph (e)(1) of this section; materials that pass one of the tests in paragraph (e)(2) of this section; or materials that are determined by the Department and EPA to be nonbiodegradable through the part 260 petition process.

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, or the Department determines, that:

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264.340 is amended by revising the first sentence of paragraph (b)(1) and adding paragraph (b)(5) to read as follows:

264.340(b)(1) Except as provided by paragraphs (b)(2) through (b)(5) of this section, the standards of this part do not apply to a new hazardous waste incineration unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, Subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, Subpart EEE,.

(5) The particulate matter standard of 264.343(c) remains in effect for incinerators that elect to comply with the alternative to the particulate matter standard of 40 CFR part 63.1206(b)(14) and 40 CFR part 63.1219(e).

264.343 is amended by revising paragraph (a)(2) to read as follows:

264.343(a)(2) An incinerator burning hazardous wastes F020, F021, F022, F023, F026, or F027 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in 264.343(a)(1).

264.347 is amended by revising paragraph (d) to read as follows:

264.347(d) This monitoring and inspection data must be recorded and the records must be placed in the operating record required by 264.73 of this regulation and maintained in the operating record for five years.

264.554 is amended by revising paragraph (c)(2) to read as follows:

264.554(c)(2) Certification by qualified professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Department determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

264.571(a) For each existing drip pad as defined in 264.570, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of 264.573, except the standards for liners and leak detection systems, specified in 264.573(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of 264.573(b) and submit the plan to the Department no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of 264.573. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Department the as-built drawings for the drip pad together with a certification by a qualified Professional

Engineer attesting that the drip pad conforms to the drawings.

264.573 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

264.573(a)(4)(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this Section.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

264.574 is amended by revising paragraph (a) to read as follows

264.574(a) During construction or installation, liners and cover systems (*e.g.*, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (*e.g.*, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in 264.573 by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

264.1061 is amended by: removing paragraphs (b)(1) and (d); and, redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

264.1061(b)(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Department.

(2) If a valve leak is detected, it shall be repaired in accordance with 264.1057(d) and (e).

264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

264.1062(a) An owner or operator subject to the requirements of 264.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b)(2) and (3) of this section.

264.1100 is amended by revising the introductory text to read as follows:

264.1100 The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under 264.1101. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

264.1101 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

264.1101(c)(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(4) Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection

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frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 264.15(b)(5).

265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) and (b)(5)(i)-(iii) to read as follows:

264.15(b)(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that must inspect at least once each month, upon approval by the Department, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track and/or South Carolina Environmental Excellence Program member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Department. The application must identify the facility as a member of the National Environmental Performance Track and/or South Carolina Environmental Excellence Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Department will notify the Performance Track and/or South Carolina Environmental Excellence Program member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track and/or South Carolina Environmental Excellence Program member facility should consider the application approved if the Department does not: (1) Deny the application; or (2) notify the Performance Track and/or South Carolina Environmental Excellence Program member facility of an extension to the 60-day deadline. In these situations, the Performance Track and/or South Carolina Environmental Excellence Program member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

(iii) Any Performance Track and/or South Carolina Environmental Excellence Program member facility that discontinues its membership or is terminated from the program must immediately notify the Department of its change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track and/or South Carolina Environmental Excellence Program inspection frequencies within seven calendar days.

265.16 is amended by adding new paragraph (a)(4) to read as follows:

265.16(a)(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

265.52 is amended by revising paragraph (b) to read as follows:

265.52(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR part 112, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance ("One Plan"). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i), items in newly designated paragraph (i) are unchanged.

265.56(i) The owner or operator must note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he must submit a written report on the incident to the Department. The report must include:

265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

265.73(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to part 265. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, and 265.1083 through 265.1090. Maintain in the operating record for three years, except for records and results pertaining to groundwater monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

(7) All closure cost estimates under 265.142 and, for disposal facilities, all postclosure cost estimates under 265.144 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to 268.5, monitoring data required pursuant to a petition under 268.6, or a certification under 268.8, and the applicable notice required by a generator under 268.7(a). All of this information must be maintained in the operating record until closure of the facility.

(15) Monitoring, testing or analytical data, and corrective action where required by 265.90, 265.93(d)(2), and 265.93(d)(5), and the certification as required by 265.196(f) must be maintained in the operating record until closure of the facility.

265.90 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

265.90(d)(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of 265.93(d)(3), for an alternate groundwater monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility;

(3) Prepare a report in accordance with 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility;

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265.93 is amended by revising paragraphs (d)(2) and (d)(5) to read as follows:

265.93(d)(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for groundwater quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

(5) The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of the groundwater quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

265.113 is amended by revising paragraph (e)(5) to read as follows:

265.113(e)(5) During the period of corrective action, the owner or operator shall provide annual reports to the Department describing the progress of the corrective action program, compile all groundwater monitoring data, and evaluate the effect of the continued receipt of nonhazardous wastes on the effectiveness of the corrective action.

265.115 is revised to read as follows:

265.115 Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Department, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until he releases the owner or operator from the financial assurance requirements for closure under 265.143(h).

265.120 is revised to read as follows:

265.120 No later than 60 days after the completion of the established postclosure care period for each hazardous waste disposal unit, the owner or operator must submit to the Department, by registered mail, a certification that the postclosure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved postclosure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Department upon request until he releases the owner or operator from the financial assurance requirements for postclosure care under 265.145(h).

265.143 is amended by revising paragraph (h) to read as follows:

265.143(h) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Department has reason to believe that final closure has not been in accordance with the approved closure plan. The Department shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

265.145 is amended by revising paragraph (h) to read as follows:

265.145(h) Release of the owner or operator from the requirements of this section. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the postclosure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the

Department will notify the owner or operator in writing that he is no longer required to maintain financial assurance for postclosure care of that unit, unless the Department has reason to believe that postclosure care has not been in accordance with the approved postclosure plan. The Department will provide the owner or operator a detailed written statement of any such reason to believe that postclosure care has not been in accordance with the approved postclosure plan.

265.147 is amended by revising paragraph (e) to read as follows

265.147(e) Period of coverage. Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Department will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Department has reason to believe that closure has not been in accordance with the approved closure plan.

265.174 is revised to read as follows (the comment is unchanged):

265.174 At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that must conduct inspections at least once each month, upon approval by the Department. To apply for reduced inspection frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

265.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

265.191(a) For each existing tank system that does not have secondary containment meeting the requirements of 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 270.11(d), that attests to the tank system's integrity by January 12, 1988.

(b)(5)(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by a qualified Professional Engineer in accordance with 270.11(d) that addresses cracks, leaks, corrosion, and erosion.

265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

265.192(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with 270.11(d) attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified

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Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

265.193 is amended by removing paragraphs (a)(2) through (a)(4); redesignating (a)(5) as (a)(2); revising paragraphs (a)(1), newly designated (a)(2) and (i)(2) (the note to (i)(2) is unchanged) to read as follows

265.193(a)(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes , within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

(i)(2) For other than non-enterable underground tanks,] and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by a qualified Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tanks surfaces to be assessed.

265.195 is amended by: revising paragraph (a) (the note to paragraph (a) is unchanged); redesignating existing paragraphs (b) and (c), as paragraphs (f) and (g), respectively; and, adding new paragraphs (b) through (e).

265.195(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:

(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation)

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(d) Performance Track and/or South Carolina Environmental Excellence Program member facilities may inspect on a less frequent basis, upon approval by the Department, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 265.15(b)(5).

(e) Ancillary equipment that is not provided with secondary containment, as described in 265.193(f)(1) through (4), must be inspected at least once each operating day.

(f) The owner or operator must inspect cathodic protection systems, if present, according to, at a minimum, the following schedule to ensure that they are functioning properly:

(1) The proper operation of the cathodic protection system must be confirmed within six months after initial installation, and annually thereafter; and

(2) All sources of impressed current must be inspected and/or tested, as appropriate, at least bimonthly (i.e., every other month).

(g) The owner or operator must document in the operating record of the facility an inspection of those items in paragraphs (a) and (b) of this section.

265.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

265.196(f) Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

265.201 is amended by: revising the paragraph (c) introductory text; redesignating paragraph (d) through (f), as paragraphs (f) through (h), respectively, items in newly designated paragraphs (f), (g) and (h) are unchanged; and adding new paragraphs (d) and (e).

265.201(c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present:

(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track and/or South Carolina Environmental Excellence Program member facilities may inspect on a less frequent basis, upon approval by the Department, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 265.15(b)(5).

(f) Generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must, upon closure of the facility, remove all hazardous waste from tanks, discharge control equipment, and discharge confinement structures.

(g) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for ignitable or reactive waste:

(h) Generators of between 100 and 1,000 kg/mo must comply with the following special requirements for incompatible wastes:

265.221 is amended by revising paragraph (a) to read as follows:

265.221(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners, and a leachate collection and removal system between the liners, and operate the leachate collection and removal system, in accordance with 264.221(c), unless exempted under 264.221(d), (e), or (f).

265.223.1 titled "Response actions" is redesignated as 265.224 and the newly designated 265.224 is amended by revising paragraph (a) to read as follows:

265.224 Response actions.

(a) The owner or operator of surface impoundment units subject to 265.221(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

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265.259 is amended by revising the first sentence of paragraph (a) to read as follows:

265.259(a) The owner or operator of waste pile units subject to 265.254 must develop and keep on-site until closure of the facility a response action plan.

265.280 is amended by revising paragraph (e) to read as follows:

265.280(e) For the purpose of complying with 265.115, when closure is completed the owner or operator may submit to the Department certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

265.301 is amended by revising paragraph (a) to read as follows:

265.301(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with 264.301(d), (e), or (f).

265.303 is amended by revising paragraph (a) to read as follows:

265.303(a) The owner or operator of landfill units subject to 265.301(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

265.314 is amended by: removing paragraph (a); redesignating paragraphs (b) through (g) as paragraphs (a) through (f), items in newly designated paragraphs (b) and (e) are unchanged; and, revising newly designated paragraph (a), and the introductory text of newly designated paragraph (f) to read as follows:

265.314(a) The placement of bulk or noncontainerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

(b) Containers holding free liquids must not be placed in a landfill unless:

(c) To demonstrate the absence or presence of free liquids in either a containerized or a bulk waste, the following test must be used: Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in R.61-79.260.11.

(d) The date for compliance with paragraph (a) of this section is November 19, 1981. The date for compliance with paragraph (c) of this section is March 22, 1982.

(e) Sorbents used to treat free liquids to be disposed of in landfills must be nonbiodegradable. Nonbiodegradable sorbents are: materials listed or described in paragraph (f)(1) of this section; materials that pass one of the tests in paragraph (f)(2) of this section; or materials that are determined by the Department to be nonbiodegradable through the Part 260 petition process.

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Department, that:

265.340 is amended by revising paragraph (b)(1) to read as follows:

265.340(b)(1) Except as provided by paragraphs (b)(2) and (b)(3), the standards no longer apply when an owner or operator demonstrates compliance with the maximum achievable control technology (MACT)

requirements of 40 CFR part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR part 63.1207(j) and 63.1210(d) documenting compliance with the requirements of part 63, subpart EEE.

265.441 is amended by revising paragraphs (a), (b), and (c) to read as follows:

265.441(a) For each existing drip pad as defined in 265.440, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and recertified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of 265.443, except the standards for liners and leak detection systems, specified in 265.443(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of 265.443(b), and submit the plan to the Department no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of 265.443. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Department the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

265.443 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

265.443(a)(4)(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

265.444 is amended by revising paragraph (a) to read as follows

265.444(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of 265.443 by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

265.1061 is amended by removing paragraphs (b)(1) and (d), and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

265.1061(b) The following requirements shall be met if an owner or operator decides to comply with the alternative standard of allowing 2 percent of valves to leak:

(1) A performance test as specified in paragraph (c) of this section shall be conducted initially upon designation, annually, and at other times requested by the Department.

(2) If a valve leak is detected, it shall be repaired in accordance with 265.1057 (d) and (e).

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265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

265.1062(a) An owner or operator subject to the requirements of 265.1057 may elect for all valves within a hazardous waste management unit to comply with one of the alternative work practices specified in paragraphs (b) (2) and (3) of this section.

265.1100 is amended by revising the introductory text to read as follows:

265.1100 The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

265.1101 is amended revising paragraphs (c)(2) and (c)(4) to read as follows:

265.1101(c)(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

(4) Inspect and record in the facility's operating record at least once every seven days, except for Performance Track and/or South Carolina Environmental Excellence Program member facilities, that must inspect up to once each month, upon approval of the director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track and/or South Carolina Environmental Excellence Program member facility must follow the procedures described in 265.15(b)(5).

266.100 is amended by revising the first sentence of paragraph (b)(1) and adding paragraphs (b)(3) and (b)(3)(i)-(iii) and add new paragraph (b)(4) to read as follows

266.100(b)(1) Except as provided by paragraphs (b)(2), (b)(3), and (b)(4) of this section, the standards of this part do not apply to a new hazardous waste boiler or industrial furnace unit that becomes subject to RCRA permit requirements after October 12, 2005; or no longer apply when an owner or operator of an existing hazardous waste boiler or industrial furnace unit demonstrates compliance with the maximum achievable control technology (MACT) requirements of 40 CFR part 63, subpart EEE, by conducting a comprehensive performance test and submitting to the Department a Notification of Compliance under 40 CFR part 63.1207(j) and 63.1210(d) documenting compliance with the requirements of 40 CFR part 63, subpart EEE.

(3) If you own or operate a boiler or hydrochloric acid production furnace that is an area source under Sec. 40 CFR part 63.2 and you elect not to comply with the emission standards under 40 CFR part 63.1216, 63.1217, and 63.1218 for particulate matter, semivolatile and low volatile metals, and total chlorine, you also remain subject to:

- (i) 266.105--Standards to control particulate matter;
- (ii) 266.106--Standards to control metals emissions, except for mercury; and
- (ii) 266.107--Standards to control hydrogen chloride and chlorine gas.

(4) The particulate matter standard of 266.105 remains in effect for boilers that elect to comply with the alternative to the particulate matter standard under 40 CFR part 63.1216(e) and 63.1217(e).

266.102 is amended by revising paragraph (e)(10) to read as follows:

266.102(e)(10) Recordkeeping. The owner or operator must maintain in the operating record of the facility all information and data required by this section for five years.

266.103 is amended by revising paragraphs (d) and (k) to read as follows:

266.103(d) Periodic Recertifications. The owner or operator must conduct compliance testing and submit to the Department a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

(k) Recordkeeping. The owner or operator must keep in the operating record of the facility all information and data required by this section for five years.

268.7 is amended by revising paragraphs (a)(1), (a)(2), and (b)(6) to read as follows:

268.7(a)(1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in 268.40, 268.45, or 268.49. This determination can be made concurrently with the hazardous waste determination required in 262.11, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in “Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,” EPA Publication SW-846, (incorporated by reference, see 260.11), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of 264.13 of this chapter and paragraph (b) of this section. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in 268.40, and are described in detail in 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column “268.7(a)(2)” of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state “This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.”) No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

(b)(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of 268.20(b) regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.*, the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section except the manifest number) The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

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268.9 is amended by revising paragraph (a) and the introductory text to paragraph (d) to read as follows:

268.9(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in 262.11. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part 261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at 268.2(i)) in the characteristic waste.

(d) Wastes that exhibit a characteristic are also subject to 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

270.6 Revise paragraphs (a) and (b) to read as follows:

270.6(a) When used in part 270 of these Regulations, the following publications are incorporated by reference. these incorporations by reference were approved by the Director of the Federal Register pursuant to 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the Federal Register. Copies may be inspected at the Library, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (3403T), Washington, DC 20460, libraryhq@epa.gov; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html

(b) The following materials are available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161, (703) 487-4600 or (800) 553-6847: or for purchase from the Superintendent of Documents, Washington, DC 20402, (202) 512-1800:

(1) "APT Course 415: Control of Gaseous Emissions," EPA Publication EPA-450/2-81-005, December 1981, IBR approved for Sec. 270.24 and 270.25.

(2) [Reserved].

270.10 is amended by revising paragraph (l) and adding paragraphs (l)(1)(i)-(ix) and (2).

270.10(l) If the Department concludes, based on one or more of the factors listed in paragraph (l)(1) of this section that compliance with the standards of 40 CFR part 63, subpart EEE alone may not be protective of human health or the environment, the Department shall require the additional information or assessment(s) necessary to determine whether additional controls are necessary to ensure protection of human health and the environment. This includes information necessary to evaluate the potential risk to human health and/or the environment resulting from both direct and indirect exposure pathways. The Department may also require a permittee or applicant to provide information necessary to determine whether such an assessment(s) should be required.

(1) The Department shall base the evaluation of whether compliance with the standards of 40 CFR part 63, subpart EEE alone is protective of human health or the environment on factors relevant to the potential risk from a hazardous waste combustion unit, including, as appropriate, any of the following factors:

(i) Particular site-specific considerations such as proximity to receptors (such as schools, hospitals, nursing homes, day care centers, parks, community activity centers, or other potentially sensitive receptors), unique dispersion patterns, etc.;

- (ii) Identities and quantities of emissions of persistent, bioaccumulative or toxic pollutants considering enforceable controls in place to limit those pollutants;
 - (iii) Identities and quantities of nondioxin products of incomplete combustion most likely to be emitted and to pose significant risk based on known toxicities (confirmation of which should be made through emissions testing);
 - (iv) Identities and quantities of other off-site sources of pollutants in proximity of the facility that significantly influence interpretation of a facility-specific risk assessment;
 - (v) Presence of significant ecological considerations, such as the proximity of a particularly sensitive ecological area;
 - (vi) Volume and types of wastes, for example wastes containing highly toxic constituents;
 - (vii) Other on-site sources of hazardous air pollutants that significantly influence interpretation of the risk posed by the operation of the source in question;
 - (viii) Adequacy of any previously conducted risk assessment, given any subsequent changes in conditions likely to affect risk; and
 - (ix) Such other factors as may be appropriate.
- (2) [Reserved]

270.14 is amended by revising paragraph (a) to read as follows:

270.14(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in 270.14 through 270.29 applicable to the facility. The part B information requirements presented in 270.14 through 270.29 reflect the standards promulgated in 264. These information requirements are necessary in order for the Department to determine compliance with the part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B cannot be provided to the extent required, the Department may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Department and signed in accordance with the requirements in 270.11. Certain technical data, such as design drawings and specification, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in 270.28 is required in part B of the permit application.

270.16 is amended by revising paragraph (a) to read as follows:

270.16(a) A written assessment that is reviewed and certified by a qualified Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under 264.191 and 264.192;

270.19(e) is amended to read as follows:

270.19(e) When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance) under 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of Part 63, subpart EEE, the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 264.345(a) and 264.345(c) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Department may apply the provisions, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

270.22 is amended by revising the introductory text to read as follows:

270.22 When an owner or operator of a cement or lightweight aggregate kiln, solid fuel boiler, liquid fuel

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boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance) under 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of part 63, Subpart EEE), the requirements of this section do not apply. The requirements of this section do apply, however, if the Department determines certain provisions are necessary to ensure compliance with 266.102(e)(1) and 266.102(e)(2)(iii) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events or if you are an area source and elect to comply with the 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Department determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

270.24 is amended by revising paragraph (d)(3) to read as follows:

270.24(d)(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of "APTI Course 415: Control of Gaseous Emissions" (incorporated by reference as specified in 270.6) or other engineering texts acceptable to the Department that present basic control device information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in Sec. 264.1035(b)(4)(iii).

270.25 is amended by revising paragraph (e)(3) to read as follows:

270.25(e)(3) A design analysis, specifications, drawings, schematics, and piping and instrumentation diagrams based on the appropriate sections of ATPI Course 415: Control of Gaseous Emissions (incorporated by reference as specified in 270.6) or other engineering texts acceptable to the Department that present basic control device design information. The design analysis shall address the vent stream characteristics and control device operation parameters as specified in 264.1035(b)(4)(iii).

270.26 is amended by revising paragraph (c)(15) to read as follows:

270.26(c)(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through (f) 264.573.

270.32 is amended by adding paragraph (b)(3) to read as follows:

270.32(b)(3) If, as the result of an assessment(s) or other information, the Department determines that conditions are necessary in addition to those required under 40 CFR parts 63, subpart EEE, 264 or 266 to ensure protection of human health and the environment, he shall include those terms and conditions in a RCRA permit for a hazardous waste combustion unit.

270.42 is amended by revising paragraph (j)(1); redesignating paragraph (j)(2) as (j)(3); adding new paragraph (j)(2); adding new paragraph (k) and (k)(1)(i)-(iv) and (2)(i)-(ii) to read as follows:

270.42(j)(1) Facility owners or operators must have complied with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210 that was in effect prior to Oct 11, 2000 (see 40 CFR part 63.1200-63.1499 revised as of July 1, 2000), in order to request a permit modification under this section for the purpose of technology changes needed to meet the standards under 40 CFR 63.1203, 63.1204, and 63.1205.

(2) Facility owners or operators must comply with the Notification of Intent to Comply (NIC) requirements of 40 CFR 63.1210(b) and 63.1212(a) before a permit modification can be requested under this section for the purpose of technology changes needed to meet the 40 CFR 63.1215, 63.1216, 63.1217, 63.1218, 63.1219, 63.1220, and 63.1221 standards promulgated on October 12, 2005.

(3) If the Department does not approve or deny the request within 90 days of receiving it, the request shall be deemed approved. The Department may, at its discretion, extend this 90 day deadline one time for up to 30 days by notifying the facility owner or operator.

(k)(1) Waiver of RCRA permit conditions in support of transition to the 40 CFR part 63 MACT standards.
 (1) You may request to have specific RCRA operating and emissions limits waived by submitting a Class 1 permit modification request under Appendix I of this section, section L(10). You must:

- (i) Identify the specific RCRA permit operating and emissions limits which you are requesting to waive;
- (ii) Provide an explanation of why the changes are necessary in order to minimize or eliminate conflicts between the RCRA permit and MACT compliance; and
- (iii) Discuss how the revised provisions will be sufficiently protective.
- (iv) The Department shall approve or deny the request within 30 days of receipt of the request. The Department may extend this 30 day deadline one time for up to 30 days by notifying the facility owner or operator.

(2) To request this modification in conjunction with MACT performance testing where permit limits may only be waived during actual test events and pretesting, as defined under 40 CFR 63.1207(h)(2)(i) and (ii), for an aggregate time not to exceed 720 hours of operation (renewable at the discretion of the Department) you must:

- (i) Submit your modification request to the Director at the same time you submit your test plans to the Administrator; and
- (ii) The Director may elect to approve or deny the request contingent upon approval of the test plans.

In Appendix I to Sec. 270.42--“Classification of Permit Modification” add 10 as a new entry in numerical order under Section L to read as follows:

Modifications	Class
*****L.***....	
10. Changes to RCRA permit provisions needed to support transition to 40 CFR part 63 (Subpart EEE--National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors), provided the procedures of Sec. 270.42(k) are followed.....	¹

add footnote: \1\ Class 1 modifications requiring prior Agency approval.

270.42 is amended by adding new paragraph (l) to read as follows:

270.42(l) Performance Track and/or the South Carolina Environmental Excellence Program member facilities. The following procedures apply to Performance Track and/or the South Carolina Environmental Excellence Program member facilities that request a permit modification under Appendix I of this section, section O(1).

(1) Performance Track and/or the South Carolina Environmental Excellence Program member facilities must have complied with the requirements of 264.15(b)(5) in order to request a permit modification under this section.

(2) The Performance Track and/or the South Carolina Environmental Excellence Program member facility should consider the application approved if the Department does not: deny the application, in writing; or notify the Performance Track and/or the South Carolina Environmental Excellence Program member facility, in writing, of an extension to the 60-day deadline within 60 days of receiving the request. In these situations, the Performance Track and/or the South Carolina Environmental Excellence Program member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility’s operating record

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In Appendix I to 270.42—“Classification of Permit Modification” add a new Section O to read as follows:

Modifications	Class
O. Burden Reduction	
1. Approval of reduced inspection frequency for Performance Track and/or the South Carolina Environmental Excellence Program member facilities for:	
a. Tanks systems pursuant to 264.195	¹ 1
b. Containers pursuant to 264.174	¹ 1
c. Containment buildings pursuant to 264.1101(c)(4)	¹ 1
d. Areas subject to spills pursuant to 264.15(b)(4)	¹ 1
2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to 264.52(b)	1
3. Changes to recordkeeping and reporting requirements pursuant to: 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5)	1
4. Changes to inspection frequency for tank systems pursuant to 264.195(b)	1
5. Changes to detection and compliance monitoring program pursuant to 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g)	1

¹Class 1 modifications requiring prior Agency approval.

270.62 is amended by revising the introductory text to read as follows:

270.62 When an owner or operator of a hazardous waste incineration unit becomes subject to RCRA permit requirements after October 12, 2005, or when an owner or operator of an existing hazardous waste incineration unit demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance), under 63.1207(j) and 63.1210(b) documenting compliance with all applicable requirements of part 63 subpart EEE, the requirements do not apply, except those provisions the Department determines are necessary to ensure compliance with 264.345(a) and 264.345(c) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events. Nevertheless, the Department may apply the provisions, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2), and 270.32(b)(3).

270.66 is amended by revising the introductory text to read as follows:

270.66 When an owner or operator of a cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace becomes subject to RCRA permit requirements after October 12, 2005 or when an owner or operator of an existing cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace demonstrates compliance with the air emission standards and limitations in 40 CFR part 63, Subpart EEE, (i.e., by conducting a comprehensive performance test and submitting a Notification of Compliance under 63.1207(j) and 63.1210 (d) documenting compliance with all applicable requirements of part 63, subpart EEE), the requirements do not apply. The requirements of this section do apply, however, if the Department determines certain provisions are necessary to ensure compliance with 266.102(e)(1) and 266.102(e)(2)(iii) if you elect to comply with 270.235(a)(1)(i) to minimize emissions of toxic compounds from startup, shutdown, and malfunction events-; or if you are an area source and elect to comply with 266.105, 266.106, and 266.107 standards and associated requirements for particulate matter, hydrogen chloride and chlorine gas, and non-mercury metals; or the Department determines certain provisions apply, on a case-by-case basis, for purposes of information collection in accordance with 270.10(k), 270.10(l), 270.32(b)(2) ,- and 270.32(b)(3).

270.235 is amended by revising the section heading and paragraphs (a)(1) introductory text and (a)(2) introductory text; revising paragraphs (b)(1) introductory text and (b)(2); adding new paragraph (c) and (c)(1)&(2).

270.235 Options for incinerators, cement kilns, lightweight aggregate kilns, solid fuel boilers, liquid fuel boilers and hydrochloric acid production furnaces to minimize emissions from startup, shutdown, and malfunction events.

(a)(1) Revisions to permit conditions after documenting compliance with MACT. The owner or operator of a RCRA-permitted incinerator, cement kiln, ~~or~~ lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace may request that the Department address permit conditions that minimize emissions from startup, shutdown, and malfunction events under any of the following options when requesting removal of permit conditions that are no longer applicable according to 264.340(b) and 266.100(b):

(2) Addressing permit conditions upon permit reissuance. The owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that has conducted a comprehensive performance test and submitted to the Department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, Subpart EEE, may request in the application to reissue the permit for the combustion unit that the Department control emissions from startup, shutdown, and malfunction events under any of the following options:

(b)(1) Interim status operations. In compliance with 265.340 and 266.100(b), the owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of part 265 or 266 may control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options after conducting a comprehensive performance test and submitting to the Department a Notification of Compliance documenting compliance with the standards of 40 CFR part 63, Subpart EEE:

(2) Operations under a subsequent RCRA permit. When an owner or operator of an incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace that is operating under the interim status standards of parts 265 or 266 submits a RCRA permit application, the owner or operator may request that the Department control emissions from startup, shutdown, and malfunction events under any of the options provided by (a)(2)(i), (a)(2)(ii), or (a)(2)(iii).

(c) New units. Hazardous waste incinerator, cement kiln, lightweight aggregate kiln, solid fuel boiler, liquid fuel boiler, or hydrochloric acid production furnace units that become subject to RCRA permit requirements after October 12, 2005 must control emissions of toxic compounds during startup, shutdown, and malfunction events under either of the following options:

(1) Comply with the requirements specified in 40 CFR 63.1206(c)(2); or

(2) Request to include in the RCRA permit, conditions that ensure emissions of toxic compounds are minimized from startup, shutdown, and malfunction events, including releases from emergency safety vents, based on review of information including the source's startup, shutdown, and malfunction plan and design. The Department will specify that these permit conditions apply only when the facility is operating under its startup, shutdown, and malfunction plan.

Fiscal Impact Statement:

The Department estimates no additional cost will be incurred by the state or its political subdivisions as a result of the promulgation, approval and implementation of these amendments; therefore, no additional state funding is being requested. Existing staff and resources have been utilized in preparation of these amendments and will further be utilized in the regulatory administration resulting from the amendments.

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Statement of Need and Reasonableness:

This Statement of Need and Reasonableness complies with S.C. Code Ann. Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment of R.61-79 Hazardous Waste Management Regulations.

Purpose: The purpose of this amendment is to maintain State consistency with relaxed regulations of the United States Environmental Protection Agency (EPA), which promulgated amendments to 40 CFR 124, 260, 261, 264, 265, 266, 268, and 270 between October 4, 2005 and April 4, 2006 by publication in the Federal Register.

Legal Authority: South Carolina Hazardous Waste Management Act, S. C. Code Ann. Section 44-56-10 et seq. and Section 44-56-30.

Plan for Implementation: Upon final approval by the Board of Health and Environmental Control, review by the General Assembly, and publication in the *State Register* as a final regulation, amended regulations will be provided in hard copy and electronic formats to the community at cost through the Department's Freedom of Information Office and at the Bureau web site.

DETERMINATION OF NEED AND REASONABLENESS OF THE PROPOSED REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

These amendments are needed and reasonable because they streamline the regulatory process while still protecting public health and the environment.

DETERMINATION OF COSTS AND BENEFITS:

The Headworks Exemption rule is designed to reduce unnecessary regulation of some low-risk wastes and as such will reduce costs to the state and the regulated community. The Standards for Hazardous Waste Combustors standards already exist under RCRA and this rule describes the transition from the RCRA permit to the MACT air emissions and operation requirements in the Clean Air Act Title V permit so there will be no additional burden to the state regulators, just a shift to greater management of combustors under the Clean Air Act and less regulation under RCRA. EPA has estimated the burden reduction rule will save up to \$3 million annually and up to 37,000 hours annually in labor time. Affected industries include manufacturing, transportation, waste treatment and mineral processing. State regulators will have reduced paper work and fewer reports to maintain and review while having access to the reports when the need arises by accessing the reports at the facilities. No costs are expected to implement new appeal provisions pursuant to state law.

UNCERTAINTIES OF ESTIMATES:

No known uncertainties.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

In the Headworks Exemption rule, the solvent content is so insignificant that its treatment by the wastewater treatment system would effectively eliminate the risk to human health and the environment. Provisions remain to protect the environment and human health if the solvents exceed allowable levels specified in the rule. The Standards for Hazardous Waste Combustors eliminates duplication of regulation under RCRA and the Clean Air Act, making the enforcement of the regulations more streamlined while still regulating health and the environment. The Burden Reduction rule reduces recordkeeping, reporting and inspection frequency, reducing costs to the regulated community as well as frequency of inspections by regulators but the rule maintains provisions to protect the environment.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

The State's ability to implement federal requirements will not be affected whether or not these amendments are adopted, as each is less stringent than current regulation. However, the adoption of these regulations will support the federal paper reduction act in minimizing the amount of paperwork reporting required of industry and reviews by regulators. The EPA determined the burdens placed by previous requirements in these areas were unnecessarily burdensome to both the regulators and the regulated community. Regulating Hazardous Waste Combustors by both RCRA and the Clean Air Act required duplication of effort without materially improving the protection of the environment.

Revision of the appeal procedures is mandated by state law. There will be no detrimental effect.

Statement of Rationale:

Upon review of the final rules published by EPA in this regulation package, including changes which streamlined recordkeeping and reporting in the Burden Reduction Rule, the changes in the Combustors rule and the exemptions proposed in the Headworks Exemption Rule, an administrative decision to adopt the rules was made based on the assumption that the reduction in stringency would simplify the regulations without compromising human health and the environment. Changes to the appeals procedure is required to conform to recent amendments to state law.

Document No. 3160

DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**CHAPTER 61**

Statutory Authority: 1976 Code Section 44-1-140

61-47. Shellfish

Synopsis:

The Department has amended R.61-47 substantially in order to: revise the Regulation to bring it up to date with current National Shellfish Sanitation Program guidance and practices; include a section on severability; update and expand definitions; update certification and permitting procedures; update growing area survey and classification standard references; update requirements for the harvesting, handling and transportation of shellfish; update compliance and inspection procedures; update certified shipper facility and aquaculture requirements; and revise style, language, and grammar for clarity, readability and consistency.

The amended regulation will assist the South Carolina shellfish industry by providing up-to-date guidance criteria by the Interstate Shellfish Shippers Conference included in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, thereby encouraging the safe and sanitary development of shellfish operations and emerging technologies. State and industry compliance with these criteria ensures that South Carolina molluscan shellfish products are harvested, processed and transported in a manner that is acceptable for interstate commerce. See Discussion below and Statements of Need and Reasonableness and Rationale herein.

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Section-by-Section Discussion:

SECTION CHANGE
CITATION

TABLE OF CONTENTS

Table of contents is revised to reflect the primary title and outline level of the regulatory text.

A.1.

Subsection amended to more accurately define purpose, scope and intent. The subsection also corrects an inaccurate reference to the national shellfish guidance organization and model code. National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish reflects the correct title of the document published by the United States Food and Drug Administration that includes a shellfish model ordinance, public health reasons and explanations, guidance documents, National Shellfish Sanitation Program policy setting documents, federal regulations related to molluscan shellfish, FDA manual of interpretations, and suggested forms for use in producing and controlling shellfish produced for sale in interstate commerce.

A.2.(a)(2)

Item amended to include shellfish that have not been tagged or labeled in accordance with the regulation.

A.2.(a)(4)

Item amended for grammar.

A.2.(a)(5)

Item amended for grammar.

A.2.(a)(6)

Amended for grammar and to refer to "authorized" in lieu of "approved."

A.2.(a)(7)

Item amended to delete identification requirements and include "poisonous or deleterious substance at levels or concentrations likely injurious to public health."

A.2.(c)

New item added. New definition inserted for "Approved."

A.2.(d)

Item renumbered and "Approved Area" amended for clarity and readability.

A.2.(e)

Item renumbered and "Aquaculture" amended for clarity and readability.

A.2.(f)

Item renumbered and "Bulk Shipment" amended to "Bulk" for clarity. Includes three sub-items that will be considered bulk for identification purposes.

A.2.(g)

Item renumbered.

A.2.(h)

Item renumbered and "Certification Number" amended for stylistic consistency.

A.2.(i)

New item added. New definition inserted for "Classification or Classify."

A.2.(j)

New item added. New definition inserted for "Classified Growing Area."

A.2.(k)

Item renumbered and "Closed Area" amended for clarity and readability.

A.2.(l)

Item renumbered and "Coliform Group" amended for stylistic consistency.

A.2.(m)

Item renumbered.

A.2.(n)

New item added. New definition inserted for "Conditionally Approved."

A.2.(o)

Item renumbered and "Conditionally Approved Area" amended to accurately reflect classification of growing areas as opposed to water, and the determination of the appropriate specific environmental conditions or time periods. Also amended for clarity and readability.

A.2.(p)

New item added. New definition inserted for "Conditionally Restricted."

A.2.(q)

Item renumbered and "Conditionally Restricted Area" amended to accurately reflect classification of growing areas as opposed to water, and the determination of the appropriate specific environmental conditions. Also amended for clarity and readability.

A.2.(r)

Item renumbered.

A.2.(s)

Item renumbered and "Critical Control Point (CCP)" amended for punctuation and clarity.

A.2.(t)

Item renumbered and amended for stylistic consistency.

A.2.(u)

Item renumbered.

A.2.(v)

Item renumbered.

A.2.(w)

Item renumbered.

A.2.(x)

Item renumbered.

A.2.(y)

Item renumbered.

A.2.(z)

Item renumbered.

A.2.(aa)

Item renumbered.

A.2.(bb)

Item renumbered.

A.2.(cc)

Item renumbered and "Fecal coliform" amended for stylistic consistency.

A.2.(dd)

Item renumbered and "Growing Area" amended as estuaries or coastal rivers delineated by the Department. Growing area and growing waters become synonymous.

A.2.(ee)

Item renumbered.

A.2.(ff)

Item renumbered and HACCP Plan amended to update CFR reference.

A.2.(gg)

Item renumbered.

A.2.(hh)

Item renumbered.

A.2.(ii)

New item added. New definitions inserted for "Lot."

A.2.(jj)

Item renumbered.

A.2.(kk)

New item added. New definition for National Shellfish Sanitation Program.

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A.2.(ll)

New item added. New definition for National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

A.2.(mm)

Item renumbered.

A.2.(nn)

Item renumbered.

A.2.(oo)

New item added. New definition inserted for "Post Harvest Processing."

A.2.(pp)

Item renumbered.

A.2.(qq)

New item added. New definition inserted for "Processor".

A.2.(rr)

New item added. New definition inserted for "Prohibited."

A.2.(ss)

Item renumbered and "Prohibited Area" amended to refer to growing areas closed by the Department in lieu of waters classified by the Department as prohibited. Also amended to state for "direct" human consumption.

A.2.(tt)

New item added. New definition inserted for "Raw."

A.2.(uu)

Item renumbered and "Relaying" amended for stylistic consistency.

A.2.(vv)

Item renumbered and "Repacker" amended for stylistic consistency.

A.2.(ww)

Item renumbered.

A.2.(xx)

Item renumbered and "Reshipper" amended for stylistic consistency.

A.2.(yy)

New item added. New definition inserted for "Restricted".

A.2.(zz)

Item renumbered and "Restricted Area" amended to refer to growing areas in lieu of waters. Also amended for clarity and readability.

A.2.(aaa)

Item renumbered and Sanitary Survey Report amended for stylistic consistency.

A.2.(bbb)

Item renumbered.

A.2.(ccc)

Item renumbered and "Scheduled Depuration Process" amended for stylistic consistency. Also amended to substitute "has been demonstrated to" in lieu of "is approved by," delete "as adequate," and insert "fecal coliform" and delete "viruses".

A.2.(ddd)

Item previously renumbered has been revised to amend "Seed" definition.

A.2.(eee)

Item renumbered.

A.2.(fff)

Item renumbered and "Shellstock" amended for consistency with National Shellfish Sanitation Program Model Ordinance definition.

A.2.(ggg)

Item renumbered and "Shellstock Shipper" amended for stylistic consistency.

A.2.(hhh)

Item renumbered. Also amended for stylistic consistency.

A.2.(iii)

Item renumbered and "Shucker-Packer (SP)" amended for stylistic consistency.

A.2.(jjj)

New item added. New definition inserted for "State Shellfish Control Authority."

A.2.(kkk)

Item renumbered.

A.2.(lll)

Item renumbered and "Vehicle" amended.

A.2.(mmm)

New item added. New definition inserted for "Vessel."

A.2.(nnn)

Item renumbered.

A.3.

New subsection added. Subsection "Severability" added per instruction of Department regulatory development staff for consistency with other Department regulations.

B.1.

Amended to properly reference National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish. "Will" amended to "shall" for consistency.

B.2.

Amended to reference newly defined "growing area" and for punctuation and stylistic consistency.

B.3.

Amended to accurately reflect National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish statistical water quality requirements for the approved classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed approved criteria. References the location of the methodology to be used in determining the estimated 90th percentile. Also amended for punctuation and stylistic consistency, grammar, and readability.

B.4.(a)

Amended to remove references to "malfunction of wastewater treatment facilities" and "potential discharges from dock or harbor facilities that may affect water quality" which are typically unpredictable. Also amended for punctuation.

B.4.(b)

Amended to emphasize that approved criteria must be met for a period of time in order to likely assure shellfish are safe for consumption. Also amended for grammar.

B.4.(c)

Amended for stylistic consistency.

B.5.(a)

Amended to replace "limited" with "moderate" and for stylistic consistency.

B.5.(b)

Amended for stylistic consistency.

B.5.(c)

Amended to accurately reflect National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish statistical water quality requirements for the restricted classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed restricted criteria. References the methodology to be used in determining the estimated 90th percentile. Also amended for stylistic consistency and readability.

B.6.(a)

Amended for punctuation, grammar, and stylistic consistency.

B.6.(b)

Amended for stylistic consistency.

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B.6.(c)

Amended to accurately reflect the National Shellfish Sanitation Guide for the Control of Molluscan Shellfish statistical water quality requirements for the conditionally restricted classification. In determining water quality compliance, neither the geometric mean nor the estimated 90th percentile value may exceed referenced criteria. References the methodology to be used in determining the estimated 90th percentile. Also amended for punctuation, stylistic consistency, and readability.

B.7.(a)

Amended for stylistic consistency and to insert “report” for consistency with definitions, and to insert “otherwise” prior to “indicate.”

B.7.(b)

Amended for stylistic consistency and to allow seed hatchery or nursery operations to operate in prohibited areas under certain conditions.

B.7.(c)

Amended for stylistic consistency.

B.7.(d)

Amended for stylistic consistency and clarity, and to address growing “areas” in lieu of growing “waters”, and to replace “adjacent to” with “receiving.”

B.7.(e)

Amended for stylistic consistency, readability and clarity, and to include verbiage “and adjacent to.”

B.7.(e)(2)

Amended for stylistic consistency.

B.7.(e)(7)

Amended for stylistic consistency.

B.7.(f)

New item added. This item addresses existing, historical marina closures of one-thousand feet and prescribes that, in the event that a permit or certificate is issued that results in an increase of the marina's potential boat occupancy rate, a dilution analysis be conducted to re-determine the prohibited closure area.

B.7.(g)

New item added. Provisionally excludes certain dry stack and fueling facilities from prohibited classifications and closure determinations.

C.

Section C. is replaced in its entirety to more clearly define harvesting, handling, and transportation operations requirements. The section provides shellfish harvesters and certified shippers more flexibility regarding bulk shellstock tagging. Additionally, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance temperature control options are included in the event that South Carolina growing areas are shown to be adversely affected by specific naturally occurring *Vibrio sp.* pathogens. Also included is a requirement for certified shippers to initiate shellstock temperature management within two hours of receiving shellstock. This item was carefully crafted in order to provide maximum flexibility for the shellfish industry. Additionally, Section C provides much needed flexibility for existing transportation temperature requirements by combining and incorporating the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance guidance for shipping times and shipment acceptability. An additional item requiring marine sanitation devices or portable toilets to be included on commercial shellfish harvest vessels equipped with mechanical harvesting equipment has been included. These larger vessels typically employ multiple workers and are often away from shore facilities for long periods of time due to their ability to harvest during any tidal stage.

D.1.(a)

Amended for stylistic consistency.

D.1.(b)

Amended for stylistic consistency.

D.1.(c)

Amended to change reference from "seed (replanting)" to "South Carolina Department of Natural Resources planting credit". This amendment will not impact industry. In the past, planting or replanting operations were often called "seed" or "seeding" operations. Seed refers to juvenile shellfish intended for growth to market size. Planting credit operations often relay and plant shellfish that are already mature.

D.1.(d)

Amended for grammatical and stylistic consistency.

D.1.(e)

Amended to change reference from "seed (replanting)" to "planting credit."

D.1.(f)

Amended for stylistic consistency. Replaced "approval is granted" with "authorized" for readability.

D.1.(g)

Amended for stylistic consistency.

D.2.

Amended for stylistic consistency.

D.3.

Amended for stylistic consistency and to update item reference.

D.3.(a)

Amended for stylistic consistency.

D.3.(b)

Amended to delete reference to "application form provided by the Department" and for stylistic consistency.

D.3.(b)(4)

Amended for stylistic consistency.

D.3.(b)(4)(a)

Item renumbered for stylistic consistency.

D.3.(b)(4)(b)

Item renumbered for stylistic consistency.

D.3.(b)(4)(c)

Item renumbered and amended for stylistic consistency.

D.3.(b)(4)(iv)

Item deleted. Duplicative requirement.

D.3.(c)

Amended to substitute "shall" in lieu of "will" and to replace "successful" with "satisfactory."

D.3.(d)

Amended to correct punctuation.

D.3.(d)(1)

Amended for stylistic consistency.

D.3.(d)(1)(b)

Amended to delete extra hyphen.

D.3.(d)(1)(c)

Amended for stylistic consistency.

D.3.(d)(2)

Amended for stylistic consistency.

D.3.(d)(2)(b)

Amended for stylistic consistency.

D.3.(d)(2)(g)

Amended for stylistic consistency.

D.3.(d)(2)(h)

Amended for stylistic consistency.

D.3.(d)(3)(d)

Amended for stylistic consistency.

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D.3.(d)(3)(e)

Amended for punctuation and readability. Insert "21" in CFR reference and "Title" in official Code of Federal Register reference.

D.3.(d)(3)(f)

Amended for stylistic consistency.

D.3.(d)(3)(h)

Amended add hyphen for stylistic consistency.

D.3.(d)(3)(h)(i)

Amended for stylistic consistency.

D.3.(d)(3)(i)(ii)

Amended for stylistic consistency.

D.3.(d)(3)(j)(i)

Amended to specify that a water disinfection system shall be required for all recirculating wet storage systems. Also amended for stylistic consistency.

D.3.(d)(3)(j)(iii)

Amended for stylistic consistency.

D.3.(d)(3)(j)(iv)

Item was amended to update procedures related to UV light replacement and testing requirements for recirculating wet storage systems.

D.3.(d)(3)(k)

Item deleted. Item is adequately addressed in Section G.

D.3.(d)(3)(l)

Item deleted. Item is adequately addressed in Section G.

D.4.

Amended for stylistic consistency.

D.5.

New item added. Allows the Department, in limited instances and upon request from a State agency having shellfish regulatory authority, to authorize the translocation of shellfish beds within prohibited growing areas for purposes of marine habitat preservation.

E.1.

Amended to allow samples to be taken for scientific examination for public health purposes. The type of test "shall" be included on the receipt. New language improves readability. Also amended for stylistic consistency.

E.2.

Amended for stylistic consistency and to state that the Department "shall" use the referenced organisms and concentrations in determining bacteriological adulteration of shellfish.

F.1.

Amended to reference a laboratory "authorized" by the Department, in lieu of "approved" by the Department, and to require that laboratories conform to requirements of Chapter III. Laboratory, National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, (chapter) III. Laboratory.

F.2.

Amended to require National Shellfish Sanitation Program microbiological methods, practices, and procedures.

F.3.

Item amended in its entirety. Item is codified following sub-items (see below).

F.3.(a)

New sub-item added for methods codification.

F.3.(a)(1)

New sub-item specifies existing AOAC and APHA methods be used.

F.3.(a)(2)

New requirement specifying physical and chemical measurements be expressed in standard units.

F.3.(b)

New sub-item allows use of EPA methods when AOAC and APHA methods are not available.

F.4.

New item "Biotoxin" added.

F.4.(a)

New sub-item specified AOAC and APHA methods for paralytic shellfish poisoning bioassay.

F.4.(b)

New sub-item specifies current APHA method for *Karenia brevis* toxin bioassay.

G.

Section is replaced in its entirety to more clearly define certification and permitting procedures/requirements. The section does not place any additional substantive requirements upon industry. The section includes new items that address National Shellfish Sanitation Program certified shipper facility minimum inspection frequencies and allowable operational deficiencies. The section also provides clearer requirements for in-state shellfish sellers (vendors) that operate without Department certification. The section recognizes (allows) interstate transport of shellfish by common carriers hired by certified shippers. The section also recognizes shellfish sales by persons operating under the authority of R.61-25, Retail Food Establishments.

H.

Section is replaced and amended in its entirety to more clearly define compliance and inspection requirements and procedures. A new section item references using specific chapters of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance to identify certified shipper compliance inspection item deficiency levels. Deficiency levels are coded as critical, key, or other. These deficiency levels are currently being used to determine certification compliance but have not been specifically identified within the current existing regulation. The section also updates and amends permit and certificate suspension/revocation and appeal process (S.C. Title 44; S.C. Title 1).

I.

Section is revised in its entirety to incorporate, by reference, portions of Chapter X. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section I. is the general section for all certified shipper facilities. The Chapter X. reference provides National Shellfish Sanitation Program Hazard Analysis Critical Control Point (HACCP), general sanitation, other model ordinance, post harvest process labeling, and shipping documents and records requirements. The section also lists several major compliance items as well as an intermediate processing plan requirement for those certified shippers that receive shellstock in bulk.

J.

Section is revised in its entirety to incorporate, by reference, Chapter XI. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section J. provides requirements for shucker-packers; a primary certified shipper category. The Chapter XI reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels. The section also includes a requirement heat shock, a shucking methodology having the potential to contaminate oysters, be conducted in accordance with a scheduled heat shock process authorized by the Department.

K.

Section is revised in its entirety to incorporate, by reference, Chapter XII. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section K. provides requirements for repackers; a primary certified shipper category. The Chapter XII reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

L.

Section is revised in its entirety to incorporate, by reference, Chapter XIII. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section L. provides requirements for shellstock-shippers; a primary certified shipper category. The Chapter XIII reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

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M.

Section is revised in its entirety to incorporate, by reference, Chapter XIV. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section M. provides requirements for reshippers; a primary certified shipper category. The Chapter XIV reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

N.

Section is revised in its entirety to incorporate, by reference, Chapter XV. of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance. Section N. provides requirements for depuration processors; a primary certified shipper category. The Chapter XV reference includes critical control points, sanitation, and other model ordinance requirements that are coded with (critical, key, other) deficiency levels.

O.1.(a)(1)

Amended for stylistic consistency and to exclude shellfish seed hatchery operations.

O.1.(a)(2)

Amended for stylistic consistency.

O.1.(b)

Amended for stylistic consistency.

O.1.(b)(1)

Amended to delete "approved" verbiage.

O.1.(b)(3)

Amended for stylistic consistency.

O.1.(c)

Amended for stylistic consistency.

O.1.(c)(2)

Amended for stylistic consistency.

O.1.(f)

Amended to exempt shellfish seed operations from water quality requirements (with specific provisions).

O.1.(f)(1)

New item added to allow prohibited area use for seed culture when sanctioned by the Department.

O.1.(f)(2)

New item requiring demonstration of acceptable levels of poisonous or deleterious substances.

O.1.(f)(3)

New item requiring Department authorization for relocation. Establishes six (6) month minimum culture time in approved waters.

O.1.(g)

Amended for stylistic consistency.

O.1.(h)

Amended for stylistic consistency.

O.1.(i)

Amended to replace "approved" with "authorized" and replace "USFDA" with "United States Food and Drug Administration."

O.1.(j)(3)

Amended to correct typographical error "inland" with "in land."

O.2

Amended for stylistic consistency.

O.3.

Amended for stylistic consistency and to delete specific section references and to specify that open water "aquaculture operations" comply with all applicable requirements of the regulation.

O.4.

Amended for stylistic consistency.

O.4.(a)

Amended for stylistic consistency.

- O.4.(a)(4)
Amended to include operations plan requirement for source of shellfish, including seed.
- O.4.(a)(9)
Amended for stylistic consistency.
- O.4.(a)(10)
New item inserted. NSSP requirement for collection of shellfish microbial and chemical quality information.
- O.4.(a)(11)
New item inserted. NSSP requirement for data collection concerning quality of food produced for use in artificial harvest systems.
- O.4.(a)(12).
Item renumbered.
- O.4.(a)(13)
Item renumbered.
- O.4.(b)(1)
Amended for stylistic consistency and to replace “approved” with “open” for clarity.
- O.4.(b)(2)(a)
Amended for stylistic consistency.
- O.4.(b)(2)(b)
Amended for stylistic consistency and to add "and" to include the following item as a requirement.
- O.4.(b)(2)(c)
Amended to correct punctuation.
- O.4.(b)(3)(b)
Amended for stylistic consistency.
- O.4.(c)(2)
Amended for stylistic consistency.
- O.4.(c)(3)
Amended for stylistic consistency.
- O.5.
Amended for grammatical and stylistic consistency. Replace "requirements" with "provisions."
- O.6.
Item deleted. Other items within the section address typical seed operations. Following items renumbered.
- O.7
Section renumbered and amended for stylistic consistency.
- O.7.(d)
Amended to include operations plan requirement for source of shellfish, including seed.

Instructions: Replace R.61-47, Shellfish, in its entirety by this amendment.

Text:

61-47. SHELLFISH

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A. GENERAL PROVISIONS.

1. Purpose and Scope. This regulation outlines requirements for producers, harvesters, processors, and transporters of shellfish and is intended to protect the health of consumers of shellfish. The requirements, standards, and implementation methods outlined herein are consistent with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish, published by the United States Department of Health and Human Services, U.S. Food and Drug Administration. The National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish is partially incorporated by reference within these regulations. This Regulation is intended to protect the health of consumers of shellfish by:

- (a) Establishing sanitary controls for the production, processing, harvesting, handling, distribution, and transportation of shellfish;
- (b) Classifying coastal shellstock growing areas in accordance with accepted public health standards;
- (c) Prohibiting the distribution of adulterated shellfish; and
- (d) Establishing permit and certification requirements for commercial shellfish activities.

2. Definitions. For the purpose of this regulation:

- (a) Adulterated means any one of the following:
 - (1) Shellfish that have been harvested from closed areas;
 - (2) Shellfish that have not been grown, harvested, stored, treated, transported, handled, shucked, packed, tagged, labeled, or offered for sale in compliance with this Regulation;
 - (3) Shellfish deemed unsafe as outlined in E.2;
 - (4) Shellfish that are putrid or unfit for human consumption;
 - (5) Shellfish that have been exposed to any unsanitary conditions;
 - (6) Shellfish which that contain any added substance, unless the substance is authorized by the Department or the United States Food and Drug Administration;
 - (7) determined to contain any poisonous or deleterious substance at a level or concentration likely injurious to public health.
- (b) Adverse Pollution Condition means a state or situation caused by meteorological, hydrological or seasonal events or point source discharges that has historically resulted in elevated fecal coliform levels in a particular harvest area.
- (c) Approved means a shellfish water quality classification that allows shellfish harvest for direct marketing for human consumption.
- (d) Approved Area means a growing area where the water quality has been classified by the Department for harvesting shellfish for direct marketing for human consumption.

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(e) Aquaculture means the cultivation of shellfish in land-based artificial growing or harvest areas, or confined cultivation in South Carolina Department of Natural Resources-permitted natural growing or harvest areas.

(f) Bulk means any of the following:

(1) A single lot of shellstock stored or shipped in individual packages which are contained within a sealed master carton or on a wrapped pallet;

(2) A single lot of unpackaged shellstock shipped in a single large-volume container such as a vehicle or vessel;

(3) A single lot of shellstock held in multiple large capacity tubs, totes, net brailers, or other holding units when being transported from a growing area to a certified shipper.

(g) Certified Shipper means a person engaged in the business of selling, distributing or otherwise transporting shellfish and who has a valid certification as a Depuration Processor(DP), Shucker-Packer(SP), Repacker(RP), Shellstock Shipper(SS), or Reshipper(RS) issued by the state in which his facility is located.

(h) Certification Number means the unique identification number assigned by the Department to each certified shipper.

(i) Classification or Classify means the designation of a growing area harvest category or categories. A growing area may be classified as any combination of approved, conditionally approved, restricted, conditionally restricted, or prohibited.

(j) Classified Growing Area means a growing area for which the Department has completed a sanitary survey report and assigned classifications of approved, conditionally approved, restricted, conditionally restricted, or prohibited.

(k) Closed Area means a growing area where the harvesting of shellfish is temporarily or permanently not allowed. The Department may place any growing area in a closed area status.

(l) Coliform Group means all of the aerobic and facultative anaerobic, gram negative, nonspore forming, rod shaped bacilli that ferment lactose broth with gas formation within forty-eight (48) hours at ninety-five (95) degrees Fahrenheit (35 degrees \pm 0.5 degrees Centigrade).

(m) Commingle or Commingling means the act of combining different lots of shellstock or shucked shellfish.

(n) Conditionally Approved means a shellfish water quality classification used to identify a growing area that meets approved criteria except under conditions described in a management plan.

(o) Conditionally Approved Area means a growing area that meets approved area criteria under certain environmental conditions determined by the Department. Direct harvesting of shellfish for human consumption is allowed at times and under conditions determined by the Department through collection of water quality and pollution source data. Conditionally approved area management employs criteria specified in a management plan.

(p) Conditionally Restricted means a shellfish water quality classification used to identify a growing area that meets restricted criteria except under conditions described in a management plan.

(q) Conditionally Restricted Area means a growing area that meets Restricted Area criteria under specific conditions determined by the Department. Conditionally restricted area management employs criteria specified in a management plan.

(r) Container means any bag, box, crate, tub, carton, or other conveyance in which shellfish may be held, carried or transported.

(s) Critical Control Point (CCP) means a point, step or procedure in a food process at which control can be applied, and a food safety hazard can, as a result of the control, be prevented, eliminated or reduced to acceptable levels.

(t) Critical deficiency means a condition or practice that results in the production of a product that is unwholesome or presents a threat to the health or safety of the consumer.

(u) Critical limit means the maximum or minimum value to which a physical, biological or chemical parameter must be controlled at a critical control point to prevent, eliminate or reduce to an acceptable level the occurrence of the identified food safety hazard.

(v) Department means the South Carolina Department of Health and Environmental Control or agents thereof having responsibility for enforcing these regulations.

(w) Depletion means the removal and disposal of all market-size shellfish from a growing area in a manner to prevent human consumption.

(x) Depuration means the process of using a controlled aquatic environment to reduce the level of bacteria and viruses in live shellfish.

(y) Depuration Facility means the physical structure wherein depuration is accomplished, including all the appurtenances necessary to the effective operation thereof.

(z) Depuration Processor (DP) means a person who is certified to receive shellstock from approved or restricted growing areas and submit such shellstock to a depuration process.

(aa) Dry Storage means the storage of shellstock out of the water.

(bb) Employee means an individual who handles, stores, transports, sells, or distributes shellfish and is employed by someone with a shellfish certificate or permit.

(cc) Fecal Coliform means that portion of the coliform group that will produce gas from lactose in an EC or A-1 multiple tube procedure liquid medium within twenty-four (24) (+ 2) hours in a water bath maintained at one hundred twelve (112) degrees Fahrenheit [forty-four and one-half (44.5) \pm 0.2 degrees Centigrade].

(dd) Growing Area means an estuary or coastal river area delineated by the Department that supports or could support live shellfish. For purposes of this regulation, growing waters shall be synonymous with growing area.

(ee) HACCP is an acronym that stands for Hazard Analysis Critical Control Point, a systematic, science based approach used in food production as a means to assure food safety.

(ff) HACCP Plan means a written document that delineates the formal procedures that a processor follows to implement the HACCP requirements set forth in 21 CFR § 123.6 (April 1, 2007) as adopted by the Interstate Shellfish Sanitation Conference.

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(gg) Harvest means the act of removing shellstock from growing areas and its placement on or in manmade conveyance or other means of transport.

(hh) Harvester means a person who gathers shellfish by any means from a growing area.

(ii) Lot means any of the following:

(1) A single type of bulk shellstock or containers of shellstock of no more than one day's harvest from a single defined growing area;

(2) A collection of containers of no more than one day's shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code;

(3) Shellstock harvested for depuration from a particular area during a single day's harvest and delivered to one depuration facility.

(jj) Marina means any of the following:

(1) locked harbor facility;

(2) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length);

(3) any facility which has effective docking space of greater than 250 linear feet or provides moorage for more than 10 boats;

(4) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats, such as a mooring field; or

(5) a dry stack facility.

(kk) National Shellfish Sanitation Program means the program cooperatively developed by state, United States Food and Drug Administration, and shellfish industry representatives resulting in sanitary control guidelines that ensure that the shellfish produced in accordance with guidelines will be safe and sanitary.

(ll) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish means the 2005 version of the United States Food and Drug Administration document with that title that consists of a Model Ordinance, supporting guidance documents, recommended forms, and other related materials associated with the National Shellfish Sanitation Program. Portions of the document are incorporated by reference herein and such referenced sections shall have effect as if fully recited within the text of this regulation. Copies can be obtained through the U.S. Food and Drug Administration or the S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.

(mm) Person means any individual, partnership, company, corporation, trustee, association, agency, or any public or private entity.

(nn) Poisonous or Deleterious Substance means a toxic compound occurring naturally or added to the environment that may be found in shellfish or shellfish growing waters for which a regulatory tolerance limit or action level has been established or may be considered harmful to public health. Examples of naturally occurring substances would include paralytic shellfish toxins and trace elements geologically leached from the

environment, such as mercury; examples of added substances would include agricultural pesticides and polynuclear aromatics.

(oo) Post Harvest Processing means processing of shellfish for the purpose of added safety or quality that involve hazards not addressed by controls in the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance for shucker-packers, repackers, shellstock shippers, or reshippers.

(pp) Process means those actions related to the operation of the Certified Shipper facilities of Depuration Processors(DP), Shucker-Packers(SP), Repackers(RP), Shellstock Shippers(SS), and Reshippers(RS).

(qq) Processor means a certified shipper.

(rr) Prohibited means an administrative classification that disallows shellfish harvest for human consumption.

(ss) Prohibited Area means a growing area that has been closed by the Department for the harvesting of shellfish for any purpose related to direct human consumption.

(tt) Raw means shellfish that have not been thermally processed:

(1) to an internal temperature of one hundred and forty-five (145) degrees Fahrenheit or greater for fifteen (15) seconds (or equivalent); or

(2) to alter the organoleptic characteristics.

(uu) Relaying means the transfer of shellstock from restricted areas or conditionally restricted areas to approved or conditionally approved areas for natural biological cleansing using the ambient environment as a treatment system.

(vv) Repacker (RP) means a certified shipper who packs shucked shellfish into containers other than those in which they were originally packaged. A repacker may act as a shellstock shipper.

(ww) Repacking means the transfer of shucked shellfish into containers other than those in which they were originally packaged.

(xx) Reshipper (RS) means certified shippers who purchase shellfish from other certified shippers and sell or distribute the shellfish without repackaging.

(yy) Restricted means a shellfish water quality classification that does not meet approved water quality criteria, disallows direct marketing of shellfish, and allows shellfish harvest only by special permit.

(zz) Restricted Area means a growing area that has been classified by the Department as not meeting water quality criteria that would allow harvesting shellfish for direct marketing for human consumption. In a restricted area, shellfish may be harvested only by special permit and direct marketing of harvested shellfish is not allowed.

(aaa) Sanitary Survey Report means a written evaluation of all actual and potential pollution sources and environmental factors that affect shellfish growing area water quality.

(bbb) Sanitize means adequate treatment of food contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance and in substantially reducing the number of other microorganisms. Such treatment shall be safe and not adversely affect shellfish.

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(ccc) Scheduled Depuration Process means the process that places shellfish harvested from conditionally restricted, restricted, or approved waters into a controlled aquatic environment selected by the processor and that has been demonstrated to the Department to effectively reduce the level of fecal coliform bacteria in live shellfish.

(ddd) Seed means juvenile shellstock intended for growth to market size.

(eee) Shellfish means all edible species of oysters, clams, mussels, and scallops; either shucked or in the shell; fresh or fresh frozen; whole or in part, except that scallops shall be excluded when the final product is the adductor muscle only.

(fff) Shellstock means live molluscan shellfish in the shell.

(ggg) Shellstock Shipper (SS) means a certified shipper who grows, harvests, buys, or sells shellstock. A shellstock shipper is not certified to shuck shellfish or repack shucked shellfish. A shellstock shipper may repackage shellstock or act as a reshipper.

(hhh) Shucked Shellfish means shellfish that have been removed from their shells.

(iii) Shucker-Packer (SP) means a certified shipper who shucks and packs shellfish. A shucker-packer may act as a repacker, shellstock shipper, or reshipper.

(jjj) State Shellfish Control Authority or Authority means the South Carolina Department of Health and Environmental Control or, if in reference to another state, the state agency having the primary authority to implement public health-related shellfish regulations.

(kkk) Systematic Random Sampling is a field sampling and data analysis design that employs a preestablished sampling schedule and assumes that a statistically representative cross section of all meteorological, hydrographic, and/or other pollution events will be included in the data set.

(lll) Vehicle means any truck, car, bus, trailer, railcar, aircraft, boat, ship, barge, dredge, or other means of conveyance by which shellfish is transported from one location to another.

(mmm) Vessel means any boat, ship, barge, dredge, or other type of watercraft used for the commercial harvest or transport of shellfish for human consumption.

(nnn) Wet Storage means storage of marketable shellfish in water after initial harvest.

3. Severability. In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect, as if such invalid portions were not originally a part of these regulations.

B. GROWING AREA SURVEY AND CLASSIFICATION.

1. Sanitary Survey. A sanitary survey of shellfish growing areas shall be conducted by the Department, and each area shall be classified prior to its approval for shellfish harvesting. Sanitary Surveys and reports will be conducted and prepared consistent with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish.

2. Classification of Growing Area. Shellfish growing areas shall be identified and assigned harvesting classifications of approved, conditionally approved, restricted, conditionally restricted, or prohibited. The assigned classification will be based upon a sanitary survey conducted by the Department. Growing areas for

which a sanitary survey has not been completed shall be classified as prohibited. The Department may also designate a growing area as a closed area and prohibit harvesting when it determines that conditions have occurred that may potentially render shellfish unsafe for human consumption.

3. Approved Area. Growing areas shall be classified approved when the sanitary survey concludes that fecal material, pathogenic microorganisms, and poisonous or deleterious substances are not present in concentrations that would render shellfish unsafe for human consumption. Approved classifications shall be determined upon a sanitary survey that includes water samples collected from stations in the designated area adjacent to actual or potential sources of pollution. For waters sampled under adverse pollution conditions, the median fecal coliform Most Probable Number (MPN) or the geometric mean MPN shall not exceed fourteen per one hundred milliliters, nor shall more than ten percent of the samples exceed a fecal coliform MPN of forty-three per one hundred milliliters (per five tube decimal dilution). For waters sampled under a systematic random sampling plan, the geometric mean fecal coliform MPN shall not exceed fourteen per one hundred milliliters, nor shall the estimated ninetieth percentile exceed an MPN of forty three per one hundred milliliters (per five tube decimal dilution). Computation of the estimated ninetieth percentile shall be determined using National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish methodology.

4. Conditionally Approved Area.

(a) Growing areas may be classified conditionally approved when they are subject to temporary conditions of actual or potential pollution. When such events are predictable, as in non-point source pollution from rainfall runoff or discharge of a major river, a management plan describing conditions under which harvesting will be allowed shall be adopted by the Department prior to classifying an area as conditionally approved. Where appropriate, the management plan for each conditionally approved area shall include performance standards for sources of controllable pollution (e.g., wastewater treatment and collection systems), evaluation of each source of pollution, and means of rapidly closing and subsequently reopening areas to shellfish harvesting. Memorandums of agreements shall be a part of these management plans where appropriate.

(b) Shellfish shall not be directly marketed from a conditionally approved area until conditions for an approved classification have been met for a period of time likely to ensure the shellfish are safe for consumption.

(c) Shellstock from conditionally approved areas that have been subjected to temporary conditions of actual or potential pollution may be relayed to approved areas for purification or depurated through controlled purification operations only by special permit issued by the Department.

5. Restricted Area.

(a) Growing areas shall be classified restricted when sanitary survey data show a moderate degree of pollution or the presence of deleterious or poisonous substances to a degree that may cause the water quality to fluctuate unpredictably or at such a frequency that a conditionally approved classification is not feasible. Shellfish may be harvested from areas classified as restricted only for the purposes of relaying or depuration and only by special permit issued by the Department and under Department supervision.

(b) The suitability of restricted areas for harvesting of shellstock for relay or depuration purposes may be determined through the use of comparison studies of background tissue samples with post-process tissue samples, as well as other process verification techniques deemed appropriate by the Department.

(c) For restricted areas to be utilized as a source of shellstock for depuration, or as source water for depuration, the fecal coliform geometric mean MPN of restricted waters sampled under adverse pollution conditions shall not exceed eighty-eight per one hundred milliliters nor shall more than ten percent of the samples exceed a MPN of two hundred and sixty per one hundred milliliters for a five tube decimal dilution

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test. For waters sampled under a systematic random sampling plan, the fecal coliform geometric mean MPN shall not exceed eighty-eight per one hundred milliliters nor shall the estimated ninetieth percentile exceed an MPN of two hundred and sixty (five tube decimal dilution). Computation of the estimated ninetieth percentile shall be obtained using National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish methodology.

6. Conditionally Restricted Area.

(a) Growing areas may be classified conditionally restricted when they are subject to temporary conditions of actual or potential pollution. When such events are predictable, as in the malfunction of wastewater treatment facilities, non-point source pollution from rainfall runoff, discharge of a major river or potential discharges from dock or harbor facilities that may affect water quality, a management plan describing conditions under which harvesting will be allowed shall be prepared by the Department prior to classifying an area as conditionally restricted. Where appropriate, the management plan for each conditionally restricted area shall include performance standards for sources of controllable pollution, e.g., wastewater treatment and collection systems and an evaluation of each source of pollution, and description of the means of rapidly closing and subsequent reopening areas to shellfish harvesting. Memorandums of agreements shall be a part of these management plans where appropriate.

(b) Shellfish may be harvested from areas classified as conditionally restricted only for the purposes of relaying or depuration and only by permit issued by the Department and under Department supervision.

(c) For conditionally restricted areas to be utilized as a source of shellstock for depuration, the fecal coliform geometric mean MPN of conditionally restricted waters sampled under adverse pollution conditions shall not exceed eighty-eight per one hundred milliliters nor shall more than ten percent of the samples exceed a MPN of two hundred and sixty per one hundred milliliters for a five tube decimal dilution test. For waters sampled under a systematic random sampling plan, the fecal coliform geometric mean MPN shall not exceed eighty-eight per one hundred milliliters nor shall the estimated ninetieth percentile exceed an MPN of two hundred and sixty per one hundred milliliters (five tube decimal dilution). Computation of the estimated ninetieth percentile shall be obtained using National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish methodology.

7. Prohibited Area.

(a) Growing areas shall be classified prohibited if there is no current sanitary survey report or if the sanitary survey report or monitoring data show unsafe levels of fecal material, pathogenic microorganisms, or poisonous or deleterious substances in the growing area or otherwise indicate that such substances could potentially reach quantities that could render shellfish unfit or unsafe for human consumption.

(b) Harvesting of shellfish from prohibited areas for human consumption shall not be allowed by the Department. This item shall not be construed to prohibit seed hatchery or nursery operations, provided such operations comply with applicable provisions of this regulation.

(c) Shellfish may be depleted for non-food use from prohibited areas upon approval of the Department and under specified conditions as outlined in D.4.

(d) Growing areas receiving sewage treatment plant and other waste discharges shall be classified as prohibited. The following assumptions and criteria will be considered in determining the area that could be potentially impacted:

(1) Pollution Conditions;

(a) Flow rate;

- (b) Sewage treatment plant performance;
 - (c) Location of shellfish resources.
- (2) Dispersion, dilution, and time of travel;
- (a) Current velocity and net transport velocity;
 - (b) Volume;
 - (c) Depth of water;
 - (d) Direction of travel and stratification;
 - (e) Location of discharge;
 - (f) Tidal characteristics;
 - (g) Receiving area geometry.
- (3) Decay rate (bacteriological die-off);
- (4) Bacteriological quality required;
- (5) Adjacent harvest use classification;
- (6) Identifiable landmarks for boundaries.

(e) Growing waters within and adjacent to marinas shall be classified as prohibited. The size and extent of closures within and adjacent to marinas shall be determined using a dilution analysis that incorporates the following assumptions:

- (1) An occupancy rate of the marina;
- (2) An assumed rate of boats that will discharge untreated waste;
- (3) An occupancy rate of two (2) persons per boat;
- (4) A rate of discharge of 2×10^9 fecal coliform per person per day;
- (5) Wastes are completely mixed in and around the marina;
- (6) The volume of water in the vicinity of the marina;
- (7) A theoretical calculated fecal coliform level of fourteen (14) MPN per one hundred (100) milliliters.

(f) Nothing in this regulation shall be construed to require that a dilution analysis be conducted for any existing marina historically encompassed by a prohibited closure of one thousand (1000) feet; provided however, that in the event a request or application is made seeking authorization to increase the marina's potential boat occupancy rate, the Department shall calculate the prohibited closure area in accordance with B.7.(e).

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(g) Any proposed or existing dry stack or fueling facility having effective docking space of two hundred and fifty (250) linear feet or less and providing moorage for ten (10) or less boats shall not constitute sole cause for classification or closure in accordance with item B.7.(e) of this Regulation.

C. HARVESTING, HANDLING, AND TRANSPORTATION OF SHELLFISH.

1. Harvesting.

(a) Harvesting of Shellfish from Closed Waters. It shall be unlawful to harvest, remove, take, buy, sell, offer for sale, or possess shellfish from areas closed by the Department. This Section shall not be construed to prevent harvesting as permitted by the Department.

(b) Harvesting Vessels. It shall be unlawful for any person engaged in commercial shellfish activities to harvest, handle, or transport shellstock in a vessel that has not been constructed, operated, and maintained to prevent contamination, deterioration, and decomposition of the shellstock.

(1) Decks and storage bins shall be constructed and located to prevent bilge water, fuel, oil, or polluted overboard water from coming into contact with the shellstock;

(2) Bilge pump discharges shall be located so that the discharge shall not contaminate shellstock;

(3) Containers used for storing shellstock shall be clean and fabricated from safe materials;

(4) Decks and storage bins used in the harvest or transport of shellstock for direct marketing shall be provided with effective drainage and kept clean with potable water or with water from a growing area in the open status;

(5) All vessels and equipment coming in contact with shellstock during handling or transport for relaying or depuration shall be thoroughly cleaned before the boat and equipment are used to transport or handle shellfish for direct marketing;

(6) Coverings shall be provided on unattended vessels to protect shellstock from exposure to hot sun, birds, and other adverse conditions.

(c) Identification of Shellstock During Harvest.

(1) Commercial harvesters shall affix a harvest identification tag to containers of shellstock prior to removal of the shellstock from the area in which it was harvested. Harvest identification tags shall:

(a) Be prominently labeled "Harvest Tag";

(b) Be durable and waterproof;

(c) Be at least 13.8 square inches in size;

(d) Contain the following accurate, indelible and legible information:

(1) Harvester's commercial saltwater fishing license number, as issued by the South Carolina Department of Natural Resources;

(2) Date and harvest start time;

(3) Harvest area;

(4) Name and certificate number of the certified shipper to whom the shellfish are being delivered;

(5) Type and quantity of shellstock.

(e) Not be altered in any manner.

(2) When shellstock are harvested from more than one harvest area on any single harvest day, each container of shellstock shall be tagged with an individual harvest identification tag.

(3) When shellstock are harvested from a single harvest area on a single day, multiple containers of shellstock may be held on a wrapped pallet, in a tub or tote, in a net brailer, or in other types of holding units, provided each individual wrapped pallet, tub or tote, net brailer, or other holding unit shall be tagged with a harvest identification tag meeting all requirements included in item C.1.(c)(1).

(4) When shellstock are harvested from a single harvest area on a single day, and a harvest vessel utilizes open decks or holds, tubs or totes, or other similar large-capacity holding units for the transport of loose, bulk shellstock, the vessel may utilize a single harvest identification tag. This tag shall be affixed to the vessel.

(5) In addition to the requirements of item C.1.(c)(1), a harvest identification tag used for tagging a holding unit shall include the following statement; "All shellstock containers in this lot have the same harvest date and area of harvest".

(6) In addition to the requirements of item C.1.(c)(1) and item C.1.(c)(5), a harvest identification tag used to identify a holding unit shall include documentation of the number of individual containers in the unit.

(d) Disposal of Body Waste.

(1) No person shall discharge untreated human fecal waste into any shellfish growing area.

(2) An approved marine sanitation device (MSD) or portable toilet shall be required on any commercial shellfish harvest vessel utilizing mechanical harvesting equipment. Use of other receptacles for sewage disposal may be allowed by the Department if the receptacles are:

(a) Constructed of impervious, cleanable materials and have tight fitting lids; and

(b) Used only for the purpose intended;

(c) Secured while on board and located, operated, and maintained to prevent contamination of shellstock by spillage or leakage.

2. Handling.

(a) Shellstock shall be protected from contamination at all times.

(b) Shellstock Temperature Management. Within two (2) hours of receiving shellstock from a harvester, certified shippers shall implement procedures to manage shellstock temperature. For purposes of this item, shellstock shall be considered received when the shellstock are located in any portion of a certified shipper facility. Nothing in this item shall be construed to reduce the maximum allowable time period for shellstock temperature control. Acceptable methods of temperature management for the period from two hours after receipt of shellstock to the maximum allowable time period for temperature control are:

(1) Mechanical refrigeration;

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(2) Icing;

(3) Mechanical air conditioning, at conditioned temperatures no greater than sixty-eight (68) degrees Fahrenheit;

(4) Evaporative cooling, including, but not limited to equipment such as fans, blowers, and/or potable water sprays;

(5) Shading, however, the use of shading alone is only acceptable when ambient (surrounding) air temperatures are no greater than sixty-eight (68) degrees Fahrenheit.

(c) Shellstock Temperature Control. For purposes of initial processing, shellstock temperature control shall be defined as the management of the environmental temperature of shellstock by means of ice, mechanical refrigeration or other approved means which is capable of lowering the temperature of the shellstock and will maintain it at fifty (50) degrees Fahrenheit [ten (10) degrees Centigrade] or less. Shellstock shall:

(1) Be placed under temperature control by the receiving certified shipper within twenty (20) hours from the time of harvest; and

(2) in the event waters of the State are confirmed as the source of two (2) or more *Vibrio vulnificus* illnesses, maximum hours to temperature control for shellfish intended for raw consumption shall, upon notice provided by the Department, be in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, VIII. Control of Shellfish Harvesting, 03 Shellstock Temperature Control, Option 1, Action Level 2, Action Level 3, or Action Level 4 (as applicable); and

(3) in the event a growing area is confirmed as the original source of product associated with two (2) or more *Vibrio parahaemolyticus* illness within the past three (3) years, the maximum hours to temperature control for shellstock harvested from the affected growing area(s) shall, upon notice provided by the Department, be in accordance with the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance, VIII. Control of Shellfish Harvesting, .03 Shellstock Temperature Control, Option 2, Action Level 2 or Action Level 3 (as applicable); and

(4) in the event that a *Vibrio parahaemolyticus* risk evaluation determines that illness is reasonably likely to occur from the consumption of oysters harvested from an aquaculture facility during times when the average monthly daytime water temperature exceeds 81 degrees Fahrenheit, the maximum allowable time from harvest to temperature control for oysters harvested from the facility shall be five (5) hours.

(d) Identification of Shellstock in the Marketplace.

(1) When at the facilities of a certified shipper, shellstock shall be tagged in accordance with the provisions of item C.1.(c) or item C.2.(d)(2) at all times.

(2) Shellstock distributed or offered for sale within the State shall be identified with tags that are:

(a) Labeled as "Sale Tag";

(b) Durable and waterproof;

(c) At least 13.8 square inches (89.03cm²) in size;

(d) Legible and indelible, and contains accurate, unaltered information in the order specified below:

- (1) The dealer's name and address;
- (2) The dealer's certification number as assigned by the Authority;
- (3) The original shellstock shipper's certification number. If depurated, the original shellstock shipper's certification number is not required;
- (4) The date and, when shellstock have been harvested in South Carolina, the time of harvest shall be included. All depurated shellstock shall include the date and time of depuration processing;
- (5) If depurated, the depuration cycle number or lot number;
- (6) The most precise identification of the harvest location as is practicable including the initials of the state of harvest, and the Authority's designation of the growing area by indexing, administrative or geographic designation. If the Authority has not indexed growing areas, then an appropriate geographical or administrative designation must be used (e.g. Long Bay, Decadent County, lease number, bed, or lot number);
- (7) When the shellstock has been transported across state lines and placed in wet storage in a dealer's operation, the statement: "THIS PRODUCT IS A PRODUCT OF (NAME OF STATE) AND WAS WET STORED AT (FACILITY CERTIFICATION NUMBER) FROM (DATE) TO (DATE)";
- (8) The type and quantity of shellstock;
- (9) The following statement in bold capitalized type on each tag: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY OR IS RETAGGED AND THEREAFTER KEPT ON FILE FOR 90 DAYS.";
- (10) All shellstock intended for raw consumption shall include a consumer advisory. The following statement, based upon guidance provided in Section 3-603.11 of the United States Food and Drug Administration 2005 Food Code (Copies can be obtained through the U.S. Food and Drug Administration or the S.C. Department of Health and Environmental Control, 2600 Bull Street, Columbia, SC 29201.), or an equivalent statement, shall be included on all shellstock: "RETAILERS, INFORM YOUR CUSTOMERS: Consuming raw or undercooked meats, poultry, seafood, shellfish or eggs may increase your risk of foodborne illness, especially if you have certain medical conditions.";
- (11) The statement "Keep Refrigerated" or an equivalent statement.

(e) Shucked Shellfish Temperature Control. Shucked shellfish shall be stored and maintained in accordance with the following:

(1) Within two (2) hours of shucking, shucked shellfish shall be stored and maintained at temperatures of forty-five (45) degrees Fahrenheit or below;

(2) Frozen shucked shellfish shall be stored and maintained at temperatures of zero (0) degrees Fahrenheit or below.

(f) Shucked Shellfish Labeling. Prior to sale or distribution, each individual container of shucked shellfish shall be labeled as follows:

(1) The shucker-packer's or repacker's certification number shall be displayed on the label of each package of shucked shellfish;

(2) Packages containing less than sixty-four (64) fluid ounces shall include:

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(a) The words "SELL BY" or "BEST IF USED BY" followed by a reasonable date when the product would be expected to reach the end of its shelf life;

(b) The date as a month and day of the month; and

(c) For fresh frozen shellfish, the year shall be added to the date.

(3) Packages containing sixty-four (64) fluid ounces or more shall be labeled in the following manner:

(a) The words "DATE SHUCKED" followed by the date shucked located on both the lid and sidewall or bottom of the container;

(b) The date shall consist of either the abbreviation for the month and number of the day of the month or in Julian format (YDDD), the last digit of the four digit year and the three digit number corresponding the day of the year; and

(c) For fresh frozen shellfish, the year shall be added to the date (for non-Julian format).

(4) Frozen shucked shellfish shall be labeled as frozen in type-size of equal prominence to the type of shellfish;

(5) Repacked shellfish shall:

(a) Include the original date of shucking on packages of sixty-four (64) fluid ounces or more;

(b) Use the original date of shucking to establish the "Sell By Date" on packages containing less than sixty-four (64) fluid ounces;

(c) If thawed for repacking, be labeled as previously frozen.

3. Transportation.

(a) Shellfish in transportation shall be protected from contamination at all times.

(b) Vehicles used to transport shellfish shall be constructed, operated, and maintained to prevent contamination, deterioration, and decomposition of shellfish. Shellfish transported in unenclosed vehicles shall at all times be protected by effective coverings, provided, however, that this requirement shall not apply to an occupied vessel during shellstock harvest and delivery by water route to a certified shipper.

(c) Commercial shellstock shipments, intended or offered for human consumption shall:

(1) Include a Bill of Sale; and

(2) Be properly identified or labeled in accordance with this regulation; and

(3) Be transported in accordance with the following protocols:

(a) When shipping time is no more than four (4) hours:

(1) Shellstock shall be alive and transported under mechanical refrigeration, equipped with automatic controls, at ambient air temperatures of forty-five (45) degrees Fahrenheit or less; or

- (2) Shellstock shall be alive and transported using ice; and
- (3) Shellstock shall be cooled to an internal shellstock body temperature of fifty (50) degrees Fahrenheit or less.

(b) When shipping time is greater than four (4) hours:

- (1) Shellstock shall be alive and transported under mechanical refrigeration, equipped with automatic controls, at ambient air temperatures of forty-five (45) degrees Fahrenheit or less; or
- (2) Shellstock shall be shipped in containers having an internal ambient air temperature of forty-five (45) degrees Fahrenheit or less; and
- (3) Shellstock shall be shipped alive and cooled to an internal shellstock body temperature of fifty (50) degrees Fahrenheit or less.

(4) Nothing in item C.3.(c)(3) shall be construed to make unlawful the intrastate shipment of shellstock harvested from within the State provided such shellstock have not exceeded any maximum allowable time period for temperature control as established by item C.2.(c).

(d) Commercial shipments of non-frozen shucked or post harvest processed shellfish shall:

- (1) Include a Bill of Sale; and
- (2) Be properly identified in accordance with this regulation; and
- (3) Be transported in accordance with the following temperature protocols:

(a) When shipping time is no more than four (4) hours:

- (1) Non-frozen shucked or post-harvest processed shellfish shall be transported under mechanical refrigeration, equipped with automatic controls, at ambient air temperatures or forty-five (45) degrees Fahrenheit or less; or
- (2) Transported well iced; and
- (3) Be cooled to an internal temperature of forty-five (45) degrees Fahrenheit or less.

(b) When shipping time is greater than four (4) hours:

- (1) Non-frozen shucked or post-harvest processed shellfish shall be transported under mechanical refrigeration, equipped with automatic controls, at ambient air temperatures of forty-five (45) degrees Fahrenheit or less; or
- (2) Non-frozen shucked or post-harvest processed shellfish shall be shipped in containers having an internal ambient air temperature of forty-five (45) degrees Fahrenheit or less; and
- (3) Non-frozen shucked or post-harvest processed shellfish shall be cooled to an internal shellstock body temperature of forty-five (45) degrees Fahrenheit or less.

(4) An operative time-temperature indicating device shall accompany each shipment.

(e) Ice used to cool shellfish during transport shall:

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- (1) Be produced from potable water in a commercial ice machine inspected by the Department; or
- (2) Be produced at a facility sanctioned by an appropriate regulatory agency.

(f) Cats, dogs, and other animals shall not be allowed in any part of the truck or other vehicle where shellstock is stored.

(g) Containers used to transport shellstock shall not be constructed, used, or maintained in any manner that would result in product contamination.

D. SPECIAL SHELLSTOCK HANDLING.

1. Relaying.

(a) Shellstock may be harvested and relayed from restricted or conditionally restricted areas to approved or conditionally approved areas for natural biological purification. The shellstock for relaying shall be of such quality that purification will be effective in reducing contaminants to safe levels.

(b) Following approval by the South Carolina Department of Natural Resources, relaying operations may be permitted and supervised by the Department. Only shellfish harvested from waters meeting approved area criteria as defined in B.3 shall be certified for marketing.

(c) Applications for Relay Permits must designate whether the shellfish are being relayed for direct marketing or for South Carolina Department of Natural Resources planting credit purposes.

(d) Shellfish relayed from a restricted or conditionally restricted area to an approved area for subsequent harvesting for direct marketing purposes shall remain planted for a period of not less than fourteen (14) consecutive days when the water temperature is above fifty (50) degrees Fahrenheit [ten (10) degrees Centigrade]. If the water temperature is less than fifty (50) degrees Fahrenheit, the Department shall make a determination as to an adequate time period to ensure natural purification. Shellfish relayed from a restricted area to a conditionally approved area for direct marketing purposes shall remain planted for a period of not less than fourteen (14) consecutive days when the water temperature is above fifty (50) degrees Fahrenheit and the area is in an open status. If the water temperature is less than fifty (50) degrees Fahrenheit, or if the area is downgraded to a closed status, the Department shall make a determination as to an adequate time period to ensure natural purification.

(e) Shellfish relayed for planting credit purposes shall remain planted for a minimum of four months.

(f) Shellfish relayed to approved or conditionally approved areas shall not be re-harvested until authorized by the Department.

(g) Areas to which shellstock are relayed shall be readily identified and marked. These areas shall be situated in a manner to avoid contamination of shellstock in adjacent growing areas.

2. Interstate Relaying. Shellstock shall not be relayed from the State to another state without prior approval of the Department and the responsible state agency that will receive the shellstock. The United States Department of Health and Human Services, Food and Drug Administration, shall be informed of such interstate activities.

3. Wet Storage. Harvested shellstock may be held in wet storage in approved shellfish growing waters or land-based ponds or tanks where effective control measures are enforced to keep shellfish fresh and protected from contamination. Proper shellstock identification as outlined in item C.1.(c)(1) must be maintained during wet storage.

(a) Permit Requirements. Prior to the wet storage of molluscan shellfish in approved near-shore growing waters, application for a Wet Storage Facility Operating Permit shall be made to and obtained from the Department. Prior to the construction, expansion or modification of any land-based wet storage facility, application for a Wet Storage Facility Construction Permit shall be made to, and a Wet Storage Facility Construction Permit obtained from, the Department. Prior to operating any land-based wet storage facility, application for a Wet Storage Facility Operating Permit shall be made to and obtained from the Department. Wet Storage Operating Permits shall be issued only in conjunction with a Certified Shipper Certificate.

(b) Wet Storage in approved near-shore shellfish growing waters - Operating Permit Requirements. Information related to the proposed construction and operation of a near-shore wet storage facility shall be submitted for Department review and approval. This information shall be provided in the form of a written operational plan detailing the scope and extent of the proposed activity, including, but not necessarily limited to location, type of construction, and species of shellfish stored. The operational plan shall address the following:

(1) the purpose of the wet storage activity, such as holding, conditioning, or increasing the salt content of shellstock;

(2) any species specific physiological factors that may affect design criteria;

(3) location of near-shore storage structures;

(4) details of the design and proposed construction of the storage structures that address the following minimum construction standards to:

(a) allow the free flow of water to shellfish; and

(b) be constructed of non-toxic materials; and

(c) be constructed so as to protect shellfish from physical, chemical or thermal conditions that may compromise shellfish survival, quality or biological activity.

(c) The Department shall issue an operating permit after approval of the operational plan and completion of a satisfactory Department inspection of the constructed facility.

(d) Wet Storage in land-based ponds or tanks.

(1) Construction Permit Requirements. An Operational Plan shall be provided in conjunction with the Wet Storage Facility Construction Permit application. The Operational Plan shall address the following:

(a) the purpose of the wet storage activity, such as holding, conditioning or increasing the salt content of shellstock;

(b) any species-specific physiological factors that may affect design criteria;

(c) details of the design and proposed construction of the onshore storage facility as required by item D.3(d)(2), source, quantity and quality of water to be used for wet storage as required by item D.3(d)(3), and details of the design and proposed construction of any water treatment system.

(2) Construction Requirements. Each land-based wet storage operation shall meet the following design, construction, and operating requirements:

(a) Effective barriers shall be provided to prevent entry of birds, animals, and vermin into the

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area.

(b) Storage tanks and related plumbing shall be fabricated of non-toxic material and shall be easily cleanable.

(c) Tanks shall be constructed so as to be easily accessible for cleaning and inspection, self-draining and fabricated from nontoxic, corrosion resistant materials.

(d) Plumbing shall be designed and installed so that it can be cleaned and sanitized on a regular schedule, as specified in the operating procedures.

(e) Storage tank design, dimensions, and construction shall be such that adequate clearance between shellstock and the tank bottom can be maintained.

(f) Shellstock containers, if used, shall be designed and constructed so that the containers allow the free flow of water to all shellstock within a container.

(g) Buildings. When a building is used for the wet storage operation:

(i) Floors, walls, and ceilings shall be constructed in compliance with the applicable provisions of Chapter I;

(ii) Lighting, plumbing, water and sewage disposal systems shall be installed in compliance with applicable provisions of Chapter I.

(h) Outdoor Tank Operation. When the wet storage operation is outdoors or in a structure other than a building, tank covers shall be used. Tank covers shall:

(i) Be constructed of a light colored material;

(ii) Prevent entry of birds, animals or vermin;

(iii) Remain closed while the system is in operation except for periods of tank loading and unloading, or cleaning.

(3) Water Supply.

(a) The quality of source water prior to treatment shall meet, at a minimum, the bacteriological standards for the restricted classification.

(b) Any well used as source water for wet storage shall be constructed, operated and maintained in accordance with all applicable Departmental regulations.

(c) Except when the source of the water is a growing area in the approved classification, a water supply sampling schedule shall be included in the dealer's operating procedures and water shall be tested according to the schedule.

(d) Results of water samples and other tests to determine the suitability of the water supply shall be maintained for at least two (2) years.

(e) Disinfection or other water treatment such as the addition of salt cannot leave residues unless they are Generally Recognized as Safe (GRAS) [see Title 21 Code of Federal Register (21CFR) (April 1, 2007)] and unless they do not interfere with the shellstock's survival, quality or activity during wet storage.

(f) Disinfected water entering the wet storage tanks shall have no detectable levels of the coliform group as measured by a recognized multi-tube MPN test per one hundred (100) ml. for potable water.

(g) When the laboratory analysis of a single sample of disinfected water entering the wet storage tanks shows any positive result for the coliform group, daily sampling shall be immediately instituted until the problem is identified and eliminated.

(h) When the problem that is causing disinfected water to show a positive result for the coliform group is eliminated, the effectiveness of the correction shall be shown on the first operating day following correction through the immediate collection, within a 24-hour period, of a set of three samples of disinfected water and one sample of the source water prior to disinfection.

(i) For water that is disinfected by ultra-violet treatment, turbidity shall not exceed twenty (20) nephelometric turbidity units (NTUs) measured in accordance with Standard Methods for the Examination of Water and Wastewater, APHA.

(ii) The disinfection unit(s) for the water supply shall be cleaned and serviced as frequently as necessary to assure effective water treatment.

(i) Continuous Flow-through Systems.

(i) If the system is of continuous flow-through design, water from a growing area classified as:

(a) Approved may be used, without disinfection, in wet storage tanks provided that the near-shore water source used for supplying the system meets the approved classification bacteriological criteria at all times that shellstock are being held in wet storage; or

(b) Other than approved may be used if the source water is continuously subjected to disinfection and it is sampled daily following disinfection.

(ii) When a source classified as other than approved is used, a study shall be required to demonstrate that the disinfection system will consistently produce water that tests negative for the coliform group under normal operating conditions. The study shall:

(a) Include five sets of three samples from each disinfection unit collected for five consecutive days at the outlet from the disinfection unit or at the inlet to at least one of the wet storage tanks served by the disinfection system;

(b) Include one sample daily for five consecutive days from the source water prior to disinfection;

(c) Use NSSP recognized methods to analyze the samples to determine coliform levels;

(d) Require all samples of disinfected water to be negative for the coliform group;

(e) Be repeated if any sample of disinfected water during the study is positive for the coliform group.

(iii) Once sanctioned for use, the water system shall be sampled daily to demonstrate that the disinfected water is negative for the coliform group.

(j) Recirculating Water System.

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(i) A water disinfection system shall be required for all recirculating wet storage systems. A study shall be required to demonstrate that the disinfection system for the recirculating system will consistently produce water that tests negative for the coliform group under all operating conditions. The study shall meet the requirements in item D.3(d)(3)(i)(ii) above.

(ii) Once sanctioned for use, the recirculating water system shall be sampled weekly to demonstrate that the disinfected water is negative for the coliform group.

(iii) When make-up water of more than ten (10) percent of the water volume in the recirculating system is added from a growing area source classified as other than approved, a set of three samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a twenty four (24) hour period to reaffirm the ability of the system to produce water free from the coliform group.

(iv) When multiple tube ultra-violet treatment with redundant capacity is used as a water disinfectant, each time a bulb change is required to replace a burned out bulb, or for periodic servicing, new ultra-violet bulbs shall be installed and old bulbs discarded. When a single tube ultra-violet treatment unit or a multi tube unit without redundancy is utilized, each time a bulb change is required either to replace a burned out bulb or for periodic servicing, new ultra-violet bulbs shall be installed and old bulbs discarded, a set of three (3) samples of disinfected water and one sample of the source water prior to disinfection shall be collected within a twenty four (24) hour period to reaffirm the ability of the system to produce water free from the coliform group. Ultra-violet systems using either a single tube or multiple-tube unit with no redundancy as their disinfections system may utilize an approved ultra-violet wavelength intensity monitoring unit to demonstrate bulb integrity.

4. Depletion of Closed Areas. If depletion of shellfish in a Prohibited Area is more economical than patrolling, all shellfish of market size and as many of smaller size as can be gathered by reasonable methods may be removed from the area by the Department or under direct supervision of the Department.

5. Shellfish Habitat Preservation. For purposes of shellfish habitat preservation, the Department may, in limited instances and with special conditions, authorize the translocation of viable shellfish beds within prohibited areas. Authorization shall be considered only upon official request from the South Carolina Department of Natural Resources.

E. SHELLFISH SAMPLING AND STANDARDS.

1. Sampling and Testing. Samples of shellfish may be taken for scientific examination for public health purposes at any reasonable time or place by agents of the Department. Samples of shellfish shall be furnished as necessary by processors and operators of facilities, trucks, carriers, stores, restaurants, and other places where shellfish are sold. Receipt for shellfish used for sampling shall be given upon request. The type of test to be performed shall be included on the receipt.

2. Adulteration Standards. In determining bacteriological adulteration of shellfish, the Department shall use an *Escherichia coli* Most Probable Number (MPN) of two hundred and thirty per one hundred grams of sample and a total bacteria count of five hundred thousand per gram. Shellfish containing levels of pathogenic organisms or other substances that render the shellfish potentially unsafe for human consumption shall also be deemed adulterated by the Department.

F. LABORATORY PROCEDURES.

1. General. Laboratory analyses shall be performed by a State laboratory or a laboratory authorized by the Department. Laboratories shall conform to requirements of National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) III. Laboratory.

2. Microbiological. Methods, practices, and procedures for the analysis of shellfish and shellfish growing or harvest waters shall be the methods required by the National Shellfish Sanitation Program.

3. Physical and Chemical.

(a) Methods for the analysis of shellfish and shellfish growing or harvest waters shall:

(1) Be the current Association of Analytical Chemists (AOAC) or American Public Health Association (APHA) method for all physical and chemical measurements; and

(2) Express results of all chemical and physical measurements in standard units, and not instrument readings.

(b) When an AOAC or APHA method is not available, EPA methods may be used.

4. Biotoxin. Methods for the analysis of shellfish and shellfish harvest waters shall be:

(a) The current Association of Analytical Chemists (AOAC) and American Public Health Association (APHA) methods used in the bioassay for paralytic shellfish poisoning toxins;

(b) The current APHA method used in the bioassay for *Karenia brevis* toxins.

G. CERTIFICATION AND PERMITTING PROCEDURES.

1. General.

(a) It shall be unlawful for any person to shuck, pack, repack, depurate, transport in interstate commerce, or purchase from harvesters or growers, shellfish, who does not possess the appropriate valid certified shipper certificate issued by the Department or other appropriate state shellfish control authority. This item shall not be construed to prevent the transport of non-adulterated shellfish products by common carriers in the hire of a certified shipper, provided shellfish products shall be transported and handled in accordance with applicable provisions of this Regulation.

(b) Certified shipper certificates shall be of the following types:

(1) Shucker-Packer;

(2) Repacker;

(3) Shellstock Shipper;

(4) Reshipper;

(5) Depuration Processor.

(c) It shall be unlawful for any person to sell, offer for sale, distribute for financial consideration, or market shellfish for any purpose related to human consumption that have not been processed by a certified shipper.

(d) Nothing in this section shall be construed to prevent the intrastate distribution or sale of shellfish products for human consumption by persons not possessing a certified shipper certificate issued by the Department, provided, however, that it shall be unlawful for any person who has not been issued a valid certified shipper certificate to:

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(1) Sell or offer for sale any shellfish that have not been obtained from a certified shipper;

(2) Sell or offer for sale any shellfish in non-original packaging, and without original tags or labels as affixed by the certified shipper from which the shellfish were obtained, provided, however, that this item shall not apply to persons possessing a valid operating permit issued under authority of South Carolina R.61-25 Retail Food Establishments, provided shellfish have been obtained from a certified shipper;

(3) Transport or store shellfish offered or intended for sale in vehicles that are not constructed, operated, and maintained to prevent contamination and deterioration of shellfish;

(4) Sell or offer for sale adulterated shellfish;

(5) Sell or re-distribute shellfish to certified shippers.

(e) It shall be unlawful for any person to relay, construct or operate a wet storage facility, construct or operate an aquaculture facility, construct a depuration facility, or harvest for depuration who does not possess the appropriate valid permit issued by the Department. Permits shall be of the following types:

(1) Relaying Permit;

(2) Wet Storage Facility Operating Permit;

(3) Wet Storage Facility Construction Permit;

(4) Depuration Harvest Permit;

(5) Depuration Facility Construction Permit;

(6) Aquaculture Facility Construction Permit;

(7) Aquaculture Facility Operating Permit.

2. Application Requirements.

(a) Application for certificates and permits shall be made on forms provided by the Department. Application forms may be obtained by contacting the S.C. Department of Health and Environmental Control, Environmental Quality Control Bureau of Water, 2600 Bull St., Columbia, S.C. 29201.

(b) A construction permit shall be required prior to the construction, expansion, or modification of any depuration, land-based aquaculture, or land-based wet storage facility. Issuance of a valid construction permit shall be required prior to issuance of the associated operating permit.

(c) Application for any activity requiring a construction permit shall include a written operations plan, including construction and site plan, detailing the scope and extent of the proposed construction and associated activity.

(d) Application for aquaculture and wet storage operating permits shall include a written operations plan detailing the scope and extent of the proposed operation.

(e) Application for certification as a depuration processor shall include a scheduled depuration process (operations plan and manual).

(f) Certificates and permits shall be non-transferable.

(g) Certificates and permits, unless otherwise specified, shall expire on June 30 of each year.

(h) Only persons who comply with the requirements of this Regulation shall be entitled to receive and retain a certificate or permit.

3. Issuance of Certificates and Permits.

(a) Certified Shipper Certificates.

(1) Upon receipt of a completed application package, including any required operations plan, the Department shall make comprehensive onsite inspections of the proposed certified shipper facility/operation as may be necessary to determine compliance with the applicable provisions of this Regulation. Inspections shall be conducted within the one hundred twenty (120) day period immediately prior to the issuance or renewal of the certification. Certification shall be issued only for facilities that meet the following requirements:

(a) Have a Hazard Analysis Critical Control Point (HACCP) plan accepted by the Authority;

(b) During inspection for certification, have no critical deficiencies (see section H.);

(c) During inspection for certification, have no more than two key deficiencies (see section H.);

(d) During inspection for certification, have no more than three other deficiencies (see section H.).

(2) The inspection report recommending initial certification shall include a compliance schedule to correct any key or other deficiencies not corrected by the dealer during the inspection.

(b) Construction and Operating Permits.

(1) Upon receipt of a completed application package, including any required written operations plan, the Department shall, as necessary, make comprehensive onsite inspections of the proposed facility or activity to determine compliance with the applicable provisions of this Regulation.

(2) Permits shall be issued only for facilities and activities meeting applicable requirements of this Regulation.

(3) Any operations plan accepted by the Department in conjunction with the issuance of a construction or operating permit shall not be modified without Department authorization.

H. INSPECTION AND COMPLIANCE.

1. Inspections.

(a) Access. For the purpose of determining compliance with this Regulation, authorized representatives of the Department shall, upon display of proper identification, be permitted to enter at any reasonable time any facility, establishment, market, vessel, or vehicle used to harvest, handle, process, store, sell, or transport shellfish.

(b) Inspection Frequency.

(1) Certified Shippers. Following issuance of a certified shipper certificate, unannounced performance-based inspections shall be made during periods of activity. Inspections and re-inspections shall be made, as determined necessary by the Department, for the effective enforcement of this Regulation. At a

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minimum, certified shipper facilities shall be inspected in accordance with the following frequencies:

- (a) monthly for Depuration Processors;
- (b) quarterly for Shucker-Packers or Repackers;
- (c) semi-annually for Shellstock Shippers or Reshippers.

(2) Permits. Following issuance of any permit, inspections shall be made during periods of activity as necessary for the effective enforcement of this Regulation.

(c) Records. Authorized representatives of the Department shall, upon display of proper identification, be permitted to examine the records of any facility, establishment, or operation certified or permitted by the Department in accordance with this Regulation, for the purpose of obtaining information pertaining to shellfish grown or harvested, purchased, received, sold, shipped, distributed, shucked, packed, depurated or processed in any manner.

2. Compliance.

(a) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) X. General Requirements For Dealers shall be used in establishing and determining Hazard Analysis Critical Control Point (HACCP) and general sanitation requirements.

(b) National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapters) XI. Shucking and Packing, XII. Repacking Of Shucked Shellfish, XIII. Shellstock Shipping, XIV. Reshipping, and XV. Depuration shall be utilized in determining certified shipper inspection item deficiency levels. Deficiencies documented during the inspection of certified shipper facilities shall be corrected in accordance with the following procedures:

(1) When any inspection detects a critical deficiency:

- (a) The deficiency shall be corrected during that inspection; or
- (b) The certified shipper shall immediately cease production affected by the deficiency.

(c) If the certified shipper facility fails to correct the critical deficiency during the inspection, the Department shall provide notice of intent to suspend or revoke the certificate.

(2) Shellfish products affected by a critical deficiency shall be controlled to prevent contamination or adulterated product from reaching consumers. The Department shall:

- (a) Condemn and destroy adulterated shellfish;
- (b) Initiate a recall of adulterated shellfish;

(c) Notify enforcement officials for the United States Food and Drug Administration, as well as shellfish control authorities in states that are known to have received adulterated shellfish.

(3) When any inspection detects key or other deficiencies not currently covered in a compliance schedule, the Department, working with the certified shipper, shall develop a compliance and correction schedule.

(4) When any inspection detects four or more new key deficiencies, the Department shall consider the following options and document the reasons for selection of one of the following options:

- (a) Revise the existing compliance schedule;
- (b) Commence action to suspend or revoke certification; or
- (c) Seek other administrative remedies.

(c) Nothing in sub-section H.2 shall be construed to limit or make null any option for remedy as provided for in Section P. of this Regulation.

(d) Stop Sale or Disposal of Shellfish.

(1) If it has been determined by the Department that shellfish have not been grown, harvested, stored, treated, transported, handled, shucked, packed, processed, sold, or offered for sale in compliance with this Regulation, those shellfish shall be deemed adulterated.

(2) Shellfish or shellfish products determined to be adulterated shall be subject to stop sale or disposal by the Department. The Department may temporarily or permanently issue an order to stop sale, condemn, destroy, recall, or otherwise dispose of all shellfish or shellfish containers found to be adulterated.

(3) Adulterated shellfish shall be disposed of at the discretion of the Department.

(e) Suspension or Revocation of Permits or Certificates.

(1) If the Department has evidence that an operator of a shellfish activity or facility has created or is responsible for conditions that may cause shellfish to become adulterated, the permit or certificate may be suspended or revoked.

(2) Serious or repeated violations of any of the requirements of this Regulation, failure to cooperate, or interference with Department personnel in the performance of their duties shall be cause for a permit or certificate to be revoked.

(3) Decisions involving the issuance, denial, renewal, modification, suspension, or revocation of permits, licenses, certification, or other actions of the Department shall be in accordance with the provisions of S.C. Code Section 44-1-60, 1976 Code of Laws, as amended.

(f) Appeal. A Department decision involving the issuance, denial, renewal, modification, suspension, or revocation of permits, licenses, certification, or other actions of the Department may be appealed by the affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

I. CERTIFIED SHIPPER FACILITIES.

1. General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, certified shippers shall comply with the following sections of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) X. General Requirements For Dealers:

- (a) .01 General HACCP Requirements;
- (b) .02 General Sanitation Requirements;

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- (c) .03 Other Model Ordinance Requirements;
- (d) .07 Post Harvest Process Labeling; and
- (e) .08 Shipping Documents and Records.

2. Shellfish Source. Certified shippers shall receive and/or process shellfish in accordance with the following:

(a) Shucker-packers, repackers, shellstock shippers, and depuration processors shall only receive or process shellfish that have been:

(1) Harvested from approved or conditionally approved growing areas in the open status, provided that this item shall not apply when closed area harvest has been conducted in conjunction with a special permit issued by the Department; or

(2) Obtained from a certified shipper that has obtained, handled, processed, and transported the shellfish in accordance with the provisions of this Regulation, or another state's substantially equivalent regulation.

(b) Reshippers shall receive shellfish only from certified shippers that have obtained, handled, processed, and transported the shellfish in accordance with the provisions of this Regulation, or another state's substantially equivalent regulation.

3. Shellfish Refrigeration. Certified Shipper facilities shall have non-mobile, mechanically refrigerated storage rooms capable of maintaining all non-frozen shellfish at a temperature of forty-five (45) degrees Fahrenheit (7.2 degrees Centigrade) or less.

4. Shellstock Temperature Management. Certified shippers shall manage shellstock temperature in accordance with the provisions of item C.2.(b).

5. Temperature Control. Certified shippers shall control shellfish temperatures in accordance with the provisions of items C.2.(c) and C.2.(e).

6. Shellstock Identification. Certified shippers shall identify shellstock in accordance with item C.2.(d)(1) of this Regulation.

7. Shucked Shellfish Labeling. Certified shippers shall label shucked shellfish in accordance with item C.2.(f)(1) of this Regulation.

8. Bulk Receiving. When bulk tagged lots of shellfish are received, certified shippers shall use an intermediate processing plan authorized by the Department to ensure shellfish are controlled to prevent commingling or misidentification.

J. SHUCKER-PACKERS.

1. General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, shucker-packers shall comply with dealer requirements of the National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) XI. Shucking and Packing.

2. Heat Shock. Heat shock shall only be conducted in accordance with a scheduled heat shock process authorized by the Department.

K. REPACKERS.

General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, repackers shall comply with National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) XII. Repacking Of Shucked Shellfish.

L. SHELLSTOCK SHIPPERS.

General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, shellstock shippers shall comply with National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) XIII. Shellstock Shipping.

M. RESHIPPERS

General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, reshippers shall comply with National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish (chapter) XIV. Reshipping.

N. DEPURATION.

General Requirements. In addition to and to the extent not inconsistent with other applicable provisions of this Regulation, depuration processors shall comply with the dealer requirements of National Shellfish Sanitation Program Guide for the Control of Molluscan Shellfish Model Ordinance (chapter) XV. Depuration.

O. SHELLFISH AQUACULTURE.

1. General.

(a) For purposes of this Regulation, aquaculture encompasses the following:

- (1) Open-water and/or Land-based operations, other than shellfish seed hatchery operations;
- (2) Monoculture (molluscan shellfish) or Polyculture (molluscan shellfish combined with non-molluscan organisms) production.

(b) Any person operating a land based aquaculture facility that grows or produces molluscan shellfish for sale shall obtain the following from the Department prior to commencing operations or harvesting shellfish for human consumption:

(1) An Aquaculture Facility Construction Permit based upon criteria described in the facility's operational plan as required by Section O.4(a); and

(2) An Aquaculture Operating Permit based upon successfully meeting the requirements of all applicable portions of this Regulation; and

(3) Certification as a processor, unless the permitted aquaculturist provides the Department with prior notice that harvested shellfish are to be delivered to a Shucker-Packer (SP), Repacker (RP), Shellstock Shipper (SS), or Depuration Processor (DP) within the State.

(c) Any person operating an open water aquaculture facility that grows or produces molluscan shellfish for sale shall obtain the following from the Department prior to commencing operations or harvesting shellfish for human consumption:

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(1) An Aquaculture Operating Permit based upon successfully meeting the requirements of all applicable portions of this Regulation; and

(2) Certification as a processor, unless the permitted aquaculturist provides the Department with prior notice that harvested shellfish are to be delivered to a Shucker-Packer (SP), Repacker (RP), Shellstock Shipper (SS), or Depuration Processor (DP) within the State.

(d) Shellfish aquaculture shall be practiced only in strict compliance with the specific provisions of the Aquaculture Permit.

(e) Applications for Aquaculture Permits must contain a written operational plan detailing the scope and extent of the operation.

(f) Water quality at any site used for aquaculture shall meet the criteria for an approved, conditionally approved, or restricted area classification provided, however, this item shall not apply to shellfish seed operations when:

(1) The use of a prohibited growing area is sanctioned for seed culture operations by the Department;

(2) Prior to relocation, seed cultured in any prohibited area are demonstrated to the Department to have acceptable levels of poisonous or deleterious substances;

(3) Seed cultured in prohibited growing areas are relocated with Department authorization and cultured for a minimum of six months in areas exhibiting approved area criteria; and

(4) Shellfish relocated in accordance with this section shall not be harvested without Department authorization.

(g) Shellfish cultured in any land-based system meeting the criteria for an approved area classification throughout the culture period may be immediately marketed.

(h) Any shellfish raised in aquaculture shall be subjected to relaying or depuration prior to direct marketing if the culture area or facility is located in or using water that is in one of the following:

(1) A conditionally approved area classification in a "closed" status; or

(2) A restricted area classification.

(i) Only drugs authorized by the United States Food and Drug Administration shall be used for shellfish treatment.

(j) Complete and accurate records shall be maintained for at least two years by the aquaculturist and shall include the:

(1) Source of shellfish, including seed;

(2) Dates of transplanting and harvest; and

(3) Water source, its treatment method, if necessary, and its quality in land based systems.

(k) Harvesting, processing, storage, and transportation of shellfish shall comply with all other applicable requirements of this Regulation.

2. Seed Source. Aquaculture Permit holders shall provide the Department with documentation concerning the source of seed shellstock.

3. Open Water Operations. Open-water aquaculture operations shall comply with all applicable requirements of this Regulation.

4. Land-Based Operations. Applicants for land-based aquaculture permits shall provide the following to the Department:

(a) A written operational plan that shall include:

- (1) A description of the design and activities of the aquaculture facility;
- (2) The specific site and boundaries in which shellfish culture activities will be conducted;
- (3) The types and locations of any structures, including rafts, pens, cages, nets, tanks, ponds, or floats utilized in the aquaculture operation;
- (4) The species and source of shellfish, including seed, to be cultured and harvested;
- (5) If appropriate, the source and species of other organisms to be cultured in any polyculture systems;
- (6) Procedures to assure that no poisonous or deleterious substances are introduced into the activities;
- (7) A program of sanitation, maintenance, and supervision to prevent contamination of the final shellfish products;
- (8) A description of the water source, including the details of any water treatment process or method, if necessary;
- (9) A program to maintain water quality that includes collection of water samples for microbial analysis, temperature and salinity monitoring, and analytical methods used. The bacterial indicator monitored shall be the same as used for monitoring growing areas;
- (10) Collection of information on the microbial and chemical quality of shellfish harvested from the aquaculture site;
- (11) Collection of data concerning the quality of food produced for use in the artificial harvest system;
- (12) Maintenance of the required records; and
- (13) How shellstock will be harvested, processed if applicable, and sold.

(b) Water Systems.

(1) Water disinfection will not be required if shellfish are held at all times in continuous flow through systems that utilize water from an approved growing area, or from a conditionally approved area in the open status.

(2) Closed or recirculating systems shall:

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(a) Not contaminate shellfish with residues that are not Generally Recognized As Safe (GRAS) [see Title 21 CFR (April 1, 2007)]; and

(b) Utilize waters classified as approved, conditionally approved or restricted; and

(c) Be maintained, at a minimum, at the bacteriological quality of the restricted classification.

(3) If the water in the closed or recirculating system is from water classified as conditionally approved, the operational plan shall include a sampling schedule and shellfish shall not be harvested until:

(a) a total of three water samples have been collected from the system a minimum of three days apart over a 14 day period; and

(b) fecal coliform levels in each sample are not greater than fourteen (14) MPN per one hundred (100) ml.

(c) Water Quality.

(1) Shellstock held at all times in waters meeting the criteria for an approved area may be used for direct marketing.

(2) If the water in a closed or recirculating system is from a source classified as conditionally approved and in the open status, shellstock may be marketed directly if the water quality meets a fecal coliform level of less than fourteen (14) MPN per one hundred (100) ml. in each sample collected in the 14 days prior to harvest.

(3) Shellstock in a closed or recirculating system that does not meet the water quality requirements of items O.4(c)(1) or O.4(c)(2) shall be relayed or depurated prior to direct marketing.

5. Polyculture Activities. Aquaculture permit applicants engaging in Polyculture activities shall include in an operational plan provisions to:

(a) Provide information concerning all sources and species of all organisms to be cultivated, cultured, and harvested;

(b) Monitor for human pathogens, unacceptable levels of animal drugs, and other poisonous or deleterious substances that might be associated with polyculture activities; and

(c) Subject all harvested shellstock to relaying or depuration.

6. Mariculture Permit Areas. Operators of shellfish mariculture permit areas permitted by the South Carolina Department of Natural Resources shall provide the Department with a written operational plan that shall include:

(a) A description of activities associated with the operation;

(b) The specific site and boundaries in which shellfish culture activities will be conducted;

(c) The types and locations of any structures, including rafts, pens, cages, nets, tanks, ponds, or floats utilized in the aquaculture operation;

(d) The type and source of shellfish, including seed, to be cultured and harvested;

(e) Documentation of the source of seed shellstock.

P. REMEDIES.

1. General. In addition to the provisions herein for administrative suspension or revocation of operating permits, the Department may, at its discretion, bring civil court proceedings to enforce provisions of this Regulation, and may also seek to impose criminal sanctions for violation of this Regulation.

2. Criminal Liability. Violation of any provision of this Regulation shall be punishable in accordance with Section 44-1-150 and Section 44-1-151, Code of Laws of South Carolina, 1976, and any subsequent amendments.

Fiscal Impact Statement:

The amendments will more clearly define requirements for harvesters, processors, and transporters of shellfish thereby limiting economic impact. No fees are associated with these proposed amendments.

Statement of Need and Reasonableness:

This statement was developed by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11):

DESCRIPTION OF REGULATION: R.61-47, Shellfish

Purpose: R.61-47 has been amended in order to: revise the Regulation to bring it up to date with current National Shellfish Sanitation Program guidance and practices; include a section on severability; update and expand definitions; update certification and permitting procedures; update growing area survey and classification standard references; update requirements for the harvesting, handling and transportation of shellfish; update compliance and inspection procedures; update certified shipper facility and aquaculture requirements; and revise style, language, and grammar for clarity, readability and consistency.

Legal Authority: S.C. Code Section 44-1-140 (1976 Code of Laws, as amended).

Plan for Implementation: These revisions will be incorporated into R.61-47 upon approval by the Board of Health and Environmental Control, the General Assembly, and publication in the S.C. State Register. These amendments will be implemented in the same manner in which the existing regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

The amendments are needed and reasonable because it will incorporate National Shellfish Sanitation Program minimum guidance criteria that have been implemented since the last revision. Regulatory adoption of National Shellfish Sanitation Program minimum guidance criteria and standards is necessary to ensure a high degree of public health protection for consumers of molluscan shellfish. State and industry compliance with these minimum criteria and standards ensures that South Carolina molluscan shellfish products processed and transported in accordance with the proposed amendment are acceptable for interstate commerce.

The amendments are needed and reasonable because it provides clearer guidance and enhanced flexibility for the shellfish industry.

The amendments are needed and reasonable in order to correct minor regulatory inconsistencies and provide stylistic consistency, better readability and clarity.

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DETERMINATION OF COSTS AND BENEFITS:

These amendments will affect consumers, harvesters, processors and transporters of shellfish. The amendment will protect the shellfish industry through the implementation of established national standards and guidance criteria. Compliance with these standards, established by the Interstate Shellfish Sanitation Conference and implemented through the United States Food and Drug Administration's National Shellfish Sanitation Program, is required for South Carolina shellfish products to be accepted in interstate commerce. The amendments will more clearly define requirements for harvesters, processors, and transporters of shellfish and help to assure that South Carolina shellfish products continued to be accepted in interstate commerce. No fees are associated with these amendments.

UNCERTAINTIES OF ESTIMATES:

Because this is an amendment of an existing regulation, the Department can be reasonably certain on the (lack of) associated costs.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

The amendment protects the health of consumers of shellfish as well as the health of shellfish resources. Additionally, the regulation functions in concert with other Department environmental and health programs and ensures consistency with Department regulations.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATION IS NOT IMPLEMENTED:

Without this amendment, Shellfish Sanitation Program compliance with National Shellfish Sanitation Program public health guidance criteria cannot be assured.

Statement of Rationale:

Department staff determined during its review of R.61-47 that it was appropriate to revise the regulation. R.61-47 was last amended in 2007. Since that time, several changes in best practices and standards have occurred. See the Statement of Need and Reasonableness above for more information regarding the factors influencing the decision to revise the regulation.

Resubmitted: May 2, 2008

Document No. 3134
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
 CHAPTER 61

Statutory Authority: 1976 Code Sections 44-7-250 et seq.

61-17. Standards for Licensing Nursing Homes

Synopsis:

South Carolina Code Section 1-23-120 directs that staff of State agencies review their regulations every five years and update them if necessary. R.61-17, Standards for Licensing Nursing Homes, was last revised February 28, 1992. Since that time there has been added emphasis regarding emergency preparedness, there have been changes in applicable laws, *e.g.*, minimum resident-staff ratios for nursing homes, criminal record checks of direct care staff, Alzheimer's Special Care Disclosure Act, Bill of Rights for Residents of Long-Term Care Facilities, and changes in national building standards, *i.e.*, International Building Code, and there have been certain guidelines, directives, interpretations, and changes in Division policy that have led to the necessity to revise this regulation in order to make it more up-to-date.

**Discussion of Changes Requested by the
 S.C. Senate Medical Affairs Committee
 by Letters Dated April 17 and 30, 2008:**

SECTION CITATION/CHANGE:

Section 202.A.

The nonrefundable initial and annual licensing fee of \$20.00 per licensed bed was changed to a licensing fee of \$10.00 per licensed bed. Also, the phrase “, or four hundred dollars (\$400.00), whichever is greater,” was deleted.

Section 202.B.

The phrase “a late fee of seventy-five dollars or twenty-five percent (\$75 or 25%) of the licensing fee amount” was reorganized to “a late fee of seventy-five dollars (\$75.00) or twenty-five percent (25%) of the licensing fee amount” for clarification.

**Discussion of Revised Regulation as submitted by the Department of Health and
 Environmental Control to the S.C. General Assembly on January 8, 2008:**

The Title is: Standards for Licensing Nursing Homes:

Section 100 includes definitions and references.

Section 200 includes conditions for licensing and fees.

Section 300 references the methods used in enforcing regulations, *i.e.*, investigations, inspections, and consultations.

Section 400 references the types of enforcement actions that may be taken by the Department, the classifications of violations, and the appeal process.

Section 500 includes the requirements for facility policies and procedures.

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Section 600 addresses the issues of staff and staff training, including volunteers and private sitters.

Section 700 addresses the issues of required reports and reporting topics.

Section 800 addresses the resident record content and record maintenance.

Section 900 includes the requirements for resident admission and retention.

Section 1000 addresses resident care and services.

Section 1100 references resident rights and assurances.

Section 1200 includes requirements for resident physical examinations and tuberculosis screening.

Section 1300 addresses medication management.

Section 1400 includes the requirements for meal service operations.

Section 1500 addresses emergency procedures and disaster preparedness.

Section 1600 includes the requirements for fire prevention.

Section 1700 references maintenance.

Section 1800 addresses infection control including practices that promote the prevention of the spread of infectious diseases, including housekeeping standards.

Section 1900 addresses quality improvement programs.

Section 2000 includes the requirements for facility design and construction.

Section 2100 addresses general construction requirements.

Section 2200 addresses hazardous elements of construction.

Section 2300 addresses fire protection equipment and systems.

Section 2400 addresses the requirement for exits.

Section 2500 addresses water supply and hygiene.

Section 2600 addresses electrical systems.

Section 2700 addresses heating, ventilation, and air conditioning systems.

Section 2800 addresses the requirements for the physical plant.

Section 2900 includes a severability clause.

Section 3000 includes “general” that refers to any conditions that have not been addressed in the regulation.

Instructions:

Replace R.61-17 in its entirety by this revision.

Text:

61-17 - STANDARDS FOR LICENSING NURSING HOMES

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101. Definitions

For the purpose of this regulation, the following definitions shall apply:

A. Abuse. Physical abuse or psychological abuse.

- 1. Physical Abuse. The act of intentionally inflicting or allowing to be inflicted physical injury on a

resident by an act or failure to act. Physical abuse includes, but is not limited to, slapping, hitting, kicking, biting, choking, pinching, burning, actual or attempted sexual battery, use of medication outside the standards of reasonable medical practice for the purpose of controlling behavior, and unreasonable confinement. Physical abuse also includes the use of a restrictive or physically intrusive procedure to control behavior for the purpose of punishment except that a therapeutic procedure prescribed by a physician or other legally authorized healthcare professional or that is part of a written ICP by a physician or other legally authorized healthcare professional is not considered physical abuse. Physical abuse does not include altercations or acts of assault between residents.

2. Psychological Abuse. The deliberate use of any oral, written, or gestured language or depiction that includes disparaging or derogatory terms to a resident or within the resident's hearing distance, regardless of the resident's age, ability to comprehend, or disability, including threats or harassment or other forms of intimidating behavior causing fear, humiliation, degradation, agitation, confusion, or other forms of serious emotional distress.

B. Activities of Daily Living (ADL). Those personal functions performed by an individual in the course of a day that include, but are not limited to, walking; bathing; shaving; brushing teeth; combing hair; dressing; eating; getting in or getting out of bed; toileting; ambulating and other similar activities.

C. Administering Medication. The direct application of a single dose of a medication to the body of a resident by injection, ingestion, or any other means. It includes the acts of preparing and giving medications in accordance with the orders of a physician or other legally authorized healthcare provider as to medication, dosage, route and frequency; observing, recording, and reporting desired effects, adverse reactions, and side effects of medication therapy; intervening when emergency care is required as a result of medication therapy; appropriately instructing the resident regarding his or her medication; recognizing accepted prescribing limits and reporting deviations to the prescriber.

D. Administrator. The individual designated by the licensee who has the authority and responsibility to manage the facility, who is in charge of all functions and activities of the facility, and who is appropriately licensed as a nursing home administrator by the South Carolina State Board of Long-Term Health Care Administrators.

E. Adult. A person eighteen (18) years of age or older.

F. Advance Directive. Any document recognized under state law indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future, such as power of attorney, healthcare directive, limited or restricted treatment cardio-pulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

G. Airborne Infection Isolation (AII). A room designed to maintain Airborne Infection Isolation, formerly called a negative pressure isolation room. An Airborne Infection Isolation room is a single-occupancy resident-care room used to isolate persons with suspected or confirmed infectious tuberculosis (TB) disease. Environmental factors are controlled in Airborne Infection Isolation rooms to minimize the transmission of infectious agents that are usually spread from person-to-person by droplet nuclei associated with coughing or aerosolization of contaminated fluids. Airborne Infection Isolation rooms may provide negative pressure in the room (so that air flows under the door gap into the room), an air flow rate of six to twelve (6–12) air changes per hour (ACH), and direct exhaust of air from the room to the outside of the building or recirculation of air through a high efficiency particulate air (HEPA) filter.

H. Annual (Annually). A time period that requires an activity to be performed at least every twelve to thirteen (12 to 13) months.

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I. Application. A completed application form and any supplemental documentation and information required by this regulation, *e.g.*, fee, emergency evacuation plan.

J. Assessment. A procedure for determining the nature and extent of the problem(s) and needs of a resident and/or a potential resident to ascertain if the facility can adequately address those problems, meet those needs, and to secure information for use in the development of the ICP. Included in the process is an evaluation of the physical, emotional, behavioral, social, spiritual, nutritional, recreational, and, when appropriate, pain management, vocational, educational, legal status/needs of a resident and/or a potential resident. Consideration of each resident's needs, strengths, and weaknesses shall be included in the assessment.

K. Blood Assay for *Mycobacterium tuberculosis* (BAMT). A general term to refer to *in vitro* diagnostic tests that assess for the presence of tuberculosis (TB) infection with *M. tuberculosis*. This term includes, but is not limited to, IFN- γ release assays (IGRA).

L. Certified Nurse Aide (CNA). A person whose duties are assigned by a licensed nurse and who has successfully completed a state-approved training program or course with a curriculum prescribed by the South Carolina Department of Health and Human Services, holds a certificate of training from that program or course and is listed on the South Carolina Registry of Certified Nurse Aides.

M. Change in Controlling Interest. The acquisition of a healthcare facility or legal entity owning a healthcare facility directly or indirectly by purchase, lease, gift, donation, inheritance, sale of stock, or comparable arrangement, including arrangements where the licensee does not change.

N. Change of Licensee. Where any of the following occurs:

1. A change in the controlling interest even if, in the case of a corporation or partnership, the legal entity retains its identity and name.

2. A change of the legal entity, *e.g.*, sole proprietorship to or from a corporation, partnership to or from a corporation, even if the controlling interest does not change.

3. In a new or change in management agreement, if the ultimate authority for the operation of the facility is surrendered and transferred from the licensee to a new manager, then a change of licensee has occurred.

O. Consultation. A visit by Department representatives who will provide information to the licensee in order to facilitate compliance with these regulations.

P. Contact Investigation. Procedures that occur when a case of infectious TB is identified, including finding persons (contacts) exposed to the case, testing and evaluation of contacts to identify Latent TB Infection (LTBI) or TB disease, and treatment of these persons, as indicated.

Q. Controlled Substance. A medication or other substance included in Schedule I, II, III, IV, and V of the Federal Controlled Substances Act and the South Carolina Controlled Substances Act.

R. Controlling Interest. In the case of a corporation, controlling interest means more than fifty percent (50%) of the total combined voting power of all classes of stock of the corporation entitled to vote or more than fifty percent (50%) of the capital, profits or beneficial interest in the voting stock of the corporation. In the case of a partnership, association, trust or other entity, controlling interest means more than fifty percent (50%) of the capital, profits or beneficial interest in the partnership, association, trust or other entity.

S. Dentist. A person currently licensed to practice dentistry by the South Carolina Board of Dentistry.

T. Department. The South Carolina Department of Health and Environmental Control (DHEC).

U. Designee. A physician, dentist, osteopath, podiatrist, physician's assistant, or advanced practice registered nurse selected by a prescriber to sign orders for medication or treatment in the prescriber's absence.

V. Dietitian. An individual who is registered by the Commission on Dietetic Registration.

W. Direct Care Staff Member and Direct Care Volunteer. A licensed nurse, or nurse aide; any other licensed professional who provides to residents 'hands on' direct care or services and includes, but is not limited to, a physical, speech, occupational, or respiratory care therapist; a person who is not licensed but provides 'hands on' physical assistance or care to a resident. It does not include a family member, a faculty member or student enrolled in an educational program, including clinical study in a nursing home.

X. Discharge. The termination of resident or outpatient status in a facility by which the facility no longer maintains active responsibility for the care of the resident or outpatient.

Y. Dispensing Medication. The transfer of possession of one (1) or more doses of a medication or device by a licensed pharmacist or individual as permitted by law, to the ultimate consumer or his or her agent pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to, or use by a resident.

Z. Do Not Resuscitate (DNR) Order. An order entered by the resident's attending physician in the resident's record that states that in the event the resident suffers cardiac or respiratory arrest, cardio-pulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardio-pulmonary resuscitation to the exclusion of other types of cardio-pulmonary resuscitation.

AA. Electronic Signature. An electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by an individual with the legal authority to sign the record.

BB. Existing Facility. A facility that was in operation and/or one that began the construction or renovation of a building (for which the licensee received written approval from the Department's Division of Health Facilities Construction, DHFC), for the purpose of operating the facility, prior to the effective date of this regulation. The licensing standards governing new facilities apply if and when an existing facility is not continuously operated and licensed under this regulation.

CC. Exploitation. 1) Causing or requiring a resident to engage in an activity or labor that is improper, unlawful, or against the reasonable and rational wishes of a resident. Exploitation does not include requiring a resident to participate in an activity or labor that is a part of a written ICP or that is prescribed or authorized by the resident's attending physician; 2) an improper, unlawful, or unauthorized use of the funds, assets, property, power of attorney, guardianship, or conservatorship of a resident by an individual for the profit or advantage of that individual or another individual; 3) or causing a resident to purchase goods or services for the profit or advantage of the seller or another individual through undue influence, harassment, duress, force, coercion, or swindling by overreaching, cheating, or defrauding the resident through cunning arts or devices that delude the resident and cause him or her to lose money or other property.

DD. Facility. A nursing home licensed by the Department.

1. Proposed Facility. A location for which the Department has received application for licensing as a nursing home.

2. Unlicensed Facility. A location for which the Department has determined that nursing care is being provided to two (2) or more individuals unrelated to the owner/operator who has not received a license to provide such nursing care at that location.

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EE. Family Council. A group of individuals, family members or responsible parties of the residents, meeting as a group, having the right to express grievances and to make recommendations and to suggest ways to improve resident care and services.

FF. Feeding Assistant. A person who is paid to feed or provide assistance with feeding residents of a nursing home. The feeding assistant shall not perform other nursing or nursing-related duties, *e.g.*, measuring or recording output, transferring and toileting.

GG. Fire Resistant. The ability of a structure, material, or assemblage to resist the effects of a large-scale severe fire exposure.

HH. Fire-Resistive Rating. The time in hours or fractions thereof that materials and their assemblies will resist fire exposure as determined by fire tests conducted in compliance with recognized standards, *i.e.*, NFPA, ASTM.

II. Health Assessment. An evaluation of the health status of a staff member or volunteer by a physician, other legally authorized healthcare provider, or registered nurse, pursuant to written standing orders and/or protocol approved by a physician's signature.

JJ. Incident. An unusual unexpected adverse event, including harm, injury, or death of staff or residents, accidents, *e.g.*, medication errors, adverse medication reactions, elopement of a resident.

KK. Individual Care Plan (ICP). A documented regimen of appropriate care, treatment, services or written action plan prepared by the facility for each resident, based on assessment data, *e.g.*, social services, which is to be implemented for the benefit of the resident.

LL. Inspection. A visit by a Department representative(s) for the purpose of determining compliance with this regulation.

MM. Institutional Nursing Home. A nursing home (established within the jurisdiction of a larger nonmedical institution) that maintains and operates organized facilities and services to accommodate only students, residents or inmates of the institution.

NN. Interdisciplinary Team. A group designated by the facility to provide or supervise care, treatment, and services provided by the facility. The group normally includes the following persons: a registered nurse, dietary, social services, direct care staff members, nurse aides, and activity professionals.

OO. Investigation. An official inquiry by an authorized individual(s) to a licensed or unlicensed facility for the purpose of determining the validity of allegations received by the Department relating to this regulation.

PP. Isolation. The separation of individuals known or suspected (via signs, symptoms, or laboratory criteria) to be infected with a contagious disease to prevent them from transmitting disease to others.

QQ. Latent TB Infection (LTBI). Infection with *M. tuberculosis*. Persons with Latent TB Infection carry the organism that causes TB but do not have TB disease, are asymptomatic, and are noninfectious. Such persons usually have a positive reaction to the tuberculin skin test.

RR. Legally Authorized Healthcare Provider. An individual authorized by law and currently licensed in South Carolina to provide specific medical treatments, care, or services to staff members and/or residents, *e.g.*, advanced practice registered nurses, physicians' assistants.

SS. Legend Drug.

1. A medication required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

- a. "Caution: Federal law prohibits dispensing without prescription";
- b. "Rx only"; or

2. A medication required by federal or state law to be dispensed pursuant to a prescription medication order or restricted to use by practitioners only; or

3. Any medication products designated by the South Carolina Board of Pharmacy to be a public health threat; or

4. Any prescribed compounded prescription within the meaning of the South Carolina Pharmacy Practice Act.

TT. License. A printed certificate issued by the Department to the licensee that authorizes the operation of a nursing home.

UU. Licensed Bed. A bed set up, or capable of being set up, within twenty-four (24) hours in a nursing home for the use of one (1) resident.

VV. Licensed Nurse. A person licensed by the South Carolina Board of Nursing as a registered nurse or licensed practical nurse.

WW. Licensee. The individual, corporation, organization, or public entity that has received a license to provide care, treatment, and services at a facility and with whom rests the ultimate responsibility for compliance with this regulation. The licensee shall be the entity to which the Certificate of Need has been issued or that has been exempted from Certificate of Need review.

1. Proposed Licensee. The individual, corporation, organization, or public entity that has submitted and the Department has received an application to obtain a license to operate a facility.

2. Unlicensed Facility Owner. The individual, corporation, organization, or public entity that has been identified by the Department as the owner/operator at a location where nursing care is being provided to two (2) or more individuals unrelated to the owner/operator, and who has not been issued a license to provide nursing care at that location by the Department.

XX. Medication. A substance that has therapeutic effects, including, but not limited to, legend drugs, nonlegend and herbal products, vitamins, and nutritional supplements, *etc.*

YY. Monitoring. The observation of a resident including psychological variables, such as behavior and observable affective state, and the values of certain physiologic variables, such as pulse, blood pressure, oxygen saturation, and respiration, by using instruments to display and/or record (continuously or intermittently).

ZZ. Monthly. A time period that requires an activity to be completed at least twelve (12) times a year within intervals ranging from twenty-five to thirty-five (25 to 35) days.

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AAA. Neglect. The failure or omission of a direct care staff member or direct care volunteer to provide the care, goods, or services necessary to maintain the health or safety of a resident including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services. Neglect may be repeated conduct or a single incident that has produced or could result in physical or psychological harm or substantial risk of death. Noncompliance with regulatory standards alone does not constitute neglect.

BBB. New Facility. All buildings or portions of buildings, new and existing building(s), that are:

1. Being licensed for the first time;
2. Providing a different service that requires a change in the type of license; or
3. Being licensed after the previous licensee's license has been revoked, suspended, or after the previous licensee has voluntarily surrendered the license and the facility has not continuously operated.

CCC. Nonlegend Medication. A medication that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the laws of this State and the federal government.

DDD. Nursing Care. A degree of care provided to a resident that reaches a level that such care, due to the degree of complexity required, can only be safely and effectively carried out by a licensed nurse or other legally authorized healthcare provider in accordance with South Carolina law.

EEE. Nursing Home. A facility with an organized nursing staff to maintain and operate organized care and services to accommodate two (2) or more unrelated individuals over a period exceeding twenty-four (24) hours that is operated either in connection with a hospital or as a freestanding facility for the express or implied purpose of providing nursing care for individuals who are not in need of hospital care. Rehabilitative therapies may be provided on an outpatient basis.

FFF. Occupational Therapist. A person currently licensed as such by the South Carolina Board of Occupational Therapy Examiners.

GGG. On Call. The continuous availability in person, by telephone, or by telecommunication to staff who are on duty in the facility and are immediately available to go on duty in the facility upon short notice.

HHH. On Duty. Staff members and volunteers who are in the building of a facility and immediately available.

III. Outpatient. A person who has been admitted for specific care and services only at a nursing home where the person leaves the facility the same day and such daily routine may be repeated until the person is discharged.

JJJ. Personal Care. The provision of one (1) or more of the following services, as required by the ICP or orders by the physician or other legally authorized healthcare provider or as reasonably expected by the resident or responsible party, including:

1. Assisting and/or directing the resident with activities of daily living;
2. Being aware of the resident's location;
3. Monitoring the activities of the resident while on the premises of the residence to assure his or her health and safety.

KKK. Pharmacist. A person currently registered as such by the South Carolina Board of Pharmacy.

LLL. Physical Examination. An examination of a resident that addresses those issues identified in Section 1200 of this regulation.

MMM. Physical Therapist. A person currently licensed as such by the South Carolina Board of Physical Therapy Examiners.

NNN. Physician. A person currently licensed as such by the South Carolina Board of Medical Examiners.

OOO. Physician Order. A physician's written authorization or prescription for the provision of services.

PPP. Physician's Assistant. A person currently licensed as such by the South Carolina Board of Medical Examiners.

QQQ. Quality Improvement Program. The process used by a facility to examine its methods and practices of providing care, treatment, and services, identify the ways to improve its performance, and take actions that result in higher quality of care and services for the facility's residents.

RRR. Quarterly. A time period that requires an activity to be performed at least four (4) times a year within intervals ranging from eighty-one to ninety-nine (81 to 99) days.

SSS. Ramp. An inclined accessible route that facilitates entrance to or egress from or within a facility.

TTT. Repeat Violation. The recurrence of any violation cited under the same section of the regulation within a thirty-six-month (36-month) period. The time period determinant of repeat violation status is not interrupted by licensee changes.

UUU. Resident. Any person, other than a staff member or volunteer, who resides in a facility and occupies a licensed bed.

VVV. Resident Council. A group of residents having the right to meet as a group to address resident issues and to make recommendations and suggest ways to improve resident care and services.

WWW. Resident Room. An area enclosed by four (4) ceiling high walls (or as determined by the Department) that can house one (1) or more residents of the facility.

XXX. Respite Care. Short-term care (a period of six (6) weeks or less) provided to an individual to relieve the family members or other individuals caring for the individual, but for not less than twenty-four (24) hours.

YYY. Responsible Party. A person who is authorized by the resident or by law to make decisions on behalf of a resident, to include, but not be limited to, a court-appointed guardian (or legal guardian as referred to in the Bill of Rights for Residents of Long-Term Care Facilities) or conservator, or individual with a healthcare power of attorney or other durable power of attorney.

ZZZ. Restraint. Any means by which movement of a resident is inhibited, *i.e.*, physical, mechanical, chemical. In addition, devices shall be considered restraints if a resident is unable to easily release from the device. Wrist bands or devices that trigger electronic alarms to warn staff that a resident is leaving a chair, bed, or room that do not restrict freedom of movement are not considered restraints.

AAAA. Revocation of License. An action by the Department to cancel or annul a license by recalling, withdrawing, or rescinding a facility's authority to operate.

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BBBB. Risk Assessment. A periodic comprehensive process of gathering, organizing, and analyzing tuberculosis data by a qualified individual or group of individuals, *e.g.*, epidemiologists, infectious disease specialists, pulmonary disease specialists, infection-control practitioners, health-care administrators, occupational health personnel, or local public health personnel, to establish the probability of adverse health impacts and to determine the current risk for transmission of tuberculosis in all areas of the facility.

CCCC. Self-Administration. A procedure in which any medication is taken orally, injected, inserted, or topically or otherwise administered by a resident to himself or herself without prompting. The procedure is performed without staff assistance and includes removing an individual dose from a previously dispensed and labeled container (including a unit dose container), verifying it with the directions on the label, taking it orally, injecting, inserting, or applying topically or otherwise administering the medication.

DDDD. Shifts. Shift one (1) is a work period that occurs primarily during the daytime hours including, but not limited to, seven a.m. to three p.m. (7:00 a.m. to 3:00 p.m.); Shift two (2) is a work period that generally includes both daytime and evening hours including, but not limited to, three p.m. to eleven p.m. (3:00 p.m. to 11:00 p.m.); Shift three (3) is a work period that occurs primarily during the nighttime hours including, but not limited to, eleven p.m. to seven a.m. (11:00 p.m. to 7:00 a.m.) In those facilities utilizing two (2) twelve-hour (12-hour) shifts, shift one (1) is the twelve-hour (12-hour) shift occurring primarily during the day, and the next shift is the twelve-hour (12-hour) shift occurring primarily during the night (See Section 606.C).

EEEE. Signal System. A system that visibly and audibly registers nurse calls electronically from the resident's bed, toilet, or bathing area to the staff work area.

FFFF. Signature. At least the first initial and full surname and title, *e.g.*, R.N., L.P.N., D.D.S., M.D., or D.O., of a person, written with his or her own hand. A controlled electronic representation of the signature or an approved rubber stamp signature may be used as legally appropriate.

GGGG. Staff Member. A person who is a compensated employee of the facility on either a full or part-time basis.

HHHH. Staff Work Area. A designated functional unit of the facility with ancillary, administrative, service facilities, communication and recording tools and equipment essential for providing nursing services to the residents.

IIII. Suspension of License. An action by the Department terminating the licensee's authority to admit new residents or readmit former residents for a period of time until the Department rescinds that restriction. It may also require the transfer or relocation of residents or the discontinuance of the services, treatment or care provided to residents. Suspension of license also includes instances when the Department determines that an immediate threat to the residents exists and residents are appropriately transferred, per S.C. Code Ann. Section 44-7-320(A) (1976, as amended).

JJJJ. Tuberculin Skin Test (TST). A diagnostic aid for detecting *M. tuberculosis* infection. A small dose (0.1 mil) of purified protein derivative (PPD) tuberculin is injected just beneath the surface of the skin (by the Mantoux method), and the area is examined for induration (hard, dense, raised area at the site of TST administration) by palpation forty-eight to seventy-two (48-72) hours after the injection (but positive reactions can still be measurable up to a week after TST administration). The size of the indurated area is measured with a millimeter ruler after identifying the margins transverse (perpendicular) to the long axis of the forearm. The reading is recorded in millimeters, including zero (0) mm to represent no induration. Redness/erythema is insignificant and is not measured or recorded.

KKKK. Two-Step Testing. Procedure used for the baseline skin testing of persons who may periodically receive TST to reduce the likelihood of mistaking a boosted reaction for a new infection. If the initial TST result is interpreted as negative, a second test is repeated one to three (1-3) weeks after the initial test. If the initial TST result is interpreted as positive, then the reaction shall be documented and followed up as positive; this reaction will serve as the baseline and no further skin testing is indicated. If the second test is given and its result is interpreted as positive, then the reaction shall be documented and followed up as positive; this reaction will serve as the baseline reading and no further skin testing is indicated. In general, the result of the second TST of the two-step procedure shall be used as the baseline reading.

LLLL. Unit Dose. The ordered amount of a drug in a prepackaged dosage form ready for administration to a particular individual by the prescribed route at the prescribed time in accordance with all applicable laws and regulations governing these practices.

MMMM. Unrelated (As in kinship). All degrees of kinship that are not included “within the third degree of consanguinity,” *i.e.*, a spouse, son, daughter, sister, brother, parent, aunt, uncle, niece, nephew, grandparent, great-grandparent, grandchild, or great-grandchild.

NNNN. Volunteer. An individual who performs tasks at the facility at the direction of facility staff without compensation.

OOOO. Weekly. A time period that requires an activity to be completed at least fifty-two (52) times a year within intervals ranging from six to eight (6 – 8) days.

PPPP. Written. Any worded or numbered expression, that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

102. References

A. The following Departmental standards and/or publications are referenced in these regulations:

1. Regulation 61-4, Controlled Substances;
2. Regulation 61-19, Vital Statistics;
3. Regulation 61-20, Communicable Diseases;
4. Regulation 61-25, Retail Food Establishments;
5. Regulation 61-51, Public Swimming Pools;
6. Regulation 61-58, State Primary Drinking Water Regulations;
7. Regulation 61-67, Standards for Wastewater Facility Construction;
8. Regulation 61-79, Hazardous Waste Management Regulations;
9. Regulation 61-105, Infectious Waste Management;
10. South Carolina Guidelines for Prevention and Control of Antibiotic Resistant Organisms.

B. Non-Departmental standards, publications, or organizations:

1. Alzheimer’s Special Care Disclosure Act;

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2. American Association of Blood Banks (AABB) (Blood Products Advisory Committee, March 14, 2002);
3. American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);
4. American Society for Testing and Materials (ASTM);
5. Bill of Rights for Residents of Long-Term Care Facilities;
6. Bloodborne Pathogens Standards, Occupational Safety and Health Act of 1970 (OSHA 29 CFR 1910.1030, April 3, 2006);
7. Centers for Disease Control and Prevention (CDC) (CDC Personnel Health Guideline, June, 1998);
8. Centers for Medicare and Medicaid Services (CMS);
9. Civil Rights Act of 1964;
10. Compressed Gas Association (CGA);
11. Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences;
12. Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health-Care Settings, 2005;
13. National Fire Protection Association (NFPA) (NFPA 25, 2002; NFPA 30, 2003; NFPA 701, 2004; NFPA 70, 99, 2005; NFPA 101, 2006; NFPA 10, 13, 14, 15, 72, 2007);
14. National Sanitation Foundation (NSF International);
15. Occupational Safety and Health Act of 1970 (OSHA);
16. Omnibus Adult Protection Act;
17. South Carolina State Fire Marshal Regulations.

C. The Department shall, at its discretion, enforce new laws that may amend the above-noted references.

SECTION 200 - LICENSE REQUIREMENTS AND FEES

201. License Requirements

A. License. No person, private or public organization, political subdivision, or governmental agency shall establish, operate, maintain, or represent itself (advertise or market) as a nursing home in South Carolina without first obtaining a license from the Department. Admission of residents or the provision of care, treatment, and/or services to residents prior to the effective date of licensure is a violation of S.C. Code Ann. Section 44-7-260(A) (1976, as amended). (I)

1. When it has been determined by the Department that nursing care is being provided at a location to accommodate two (2) or more unrelated persons over a period exceeding twenty-four (24) hours, and the owner has not been issued a license from the Department to provide such care, treatment, and/or services, the owner shall cease operation immediately and assure the health and safety of the residents. (I)

2. A facility shall provide only the care, treatment, and/or services of which it is capable and equipped to provide, and has been authorized by the Department to provide pursuant to the definitions in Sections 101.DDD and 101.JJJ of this regulation. (I)

3. Current or previous violations of the South Carolina Code of Laws and/or Department regulations may jeopardize the issuance of a license for the facility or the licensing of any other facility or activity or addition to an existing facility that is owned or operated by the licensee. (I)

4. No license may be issued, reissued, or renewed until all monetary penalties finally assessed against a facility have been paid and/or other enforcement actions resolved.

B. Compliance. A license shall not be issued to an owner and/or operator until the owner and/or operator has demonstrated to the Department that the proposed facility is in substantial compliance with the licensing standards. In the event a licensee who already has a facility or activity licensed by the Department makes application for another facility or activity or increase in licensed capacity, the currently licensed facility or activity shall be in substantial compliance with the applicable standards prior to the Department issuing a license to the proposed facility or activity or an amended license to the existing facility. Facilities shall comply with applicable State, Federal, and local laws, codes, and regulations. (II)

1. A copy of the licensing regulation for nursing homes in South Carolina and a current copy of R.61-25 shall be maintained in the facility by the licensee.

2. The license is considered property of the Department and may not be duplicated in such a manner that it cannot be distinguished from the original. (II)

C. Compliance with Architectural Standards. Licensed facilities shall be allowed to continue utilizing the previously-licensed structure without architectural modification and shall comply with the remainder of the standards within this regulation. Proposed facilities for which the licensee has received written approval from the Department's Division of Health Facilities Construction prior to the effective date of this regulation shall be allowed to comply with the previously-approved architectural standards and shall comply with the remainder of the standards within this regulation. Existing facilities are not required to modify square footage of resident rooms, sitting areas, and maximum number of beds in resident rooms. (II)

D. Licensed Bed Capacity. No facility that has been licensed for a set number of licensed beds, as identified on the face of the license, shall exceed the licensed bed capacity. No facility shall establish new care or services or occupy additional beds or renovated space without first obtaining authorization from the Department. Beds for use of staff members and volunteers are not included in the licensed bed capacity number, provided such beds and locations are so identified and used exclusively by staff members and volunteers. (II)

E. Persons Received in Excess of Licensed Bed Capacity. No facility shall receive for care, treatment, or services persons in excess of the licensed bed capacity. As an exception, in the event that the facility temporarily provides shelter for evacuees who have been displaced due to a justified emergency, *e.g.*, disaster, then for the duration of that emergency, provided the health and safety of all residents are reasonably accommodated, it is permissible to temporarily exceed the licensed capacity for the facility in order to accommodate these persons (See Section 1503). (I)

F. Issuance and Terms of License. A license is issued by the Department and shall be posted in a conspicuous place in a public area within the facility. (II)

1. The issuance of a license does not guarantee adequacy of individual care, treatment and/or services, personal safety, and fire safety of any resident or occupant of a facility. (II)

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2. A license is not assignable or transferable and is subject to suspension or revocation at any time by the Department for the licensee's failure to comply with the laws and regulations of this State. (II)

3. A license shall be effective for a specified facility, at a specific location(s), for a specified period following the date of issue as determined by the Department. A license shall remain in effect until the Department notifies the licensee of a change in that status. (II)

4. Facilities owned by the same entity but not located on the same adjoining or contiguous property shall be separately licensed. Roads or local streets, except limited access, *e.g.*, interstate highways, shall not be considered as dividing otherwise adjoining or contiguous property.

5. Separate licenses are not required, but may be issued, for separate buildings on the same or adjoining grounds where a single level or type of care is provided.

6. Multiple types of facilities on the same premises shall be licensed separately even though owned by the same entity.

G. Facility Name. No proposed facility shall be named nor shall any existing facility have its name changed to the same or similar name as any other facility licensed in South Carolina. The Department shall determine if names are similar. If an entity owns multiple facilities and elects to use a common name for two (2) or more of the facilities, the geographic area in which the facilities is located may be part of the name.

H. Application. Applicants for a license shall submit to the Department a completed application on a form prescribed and furnished by the Department prior to initial licensing and periodically thereafter at intervals determined by the Department. The application includes both the applicant's oath assuring that the contents of the application are accurate and true, and that the applicant will comply with this regulation. The application shall be signed by the owner(s) if an individual or partnership; in the case of a corporation, by two (2) of its officers; or in the case of a governmental unit, by the head of the governmental department having jurisdiction. The application shall set forth the full name and address of the facility for which the license is sought and of the owner in the event his or her address is different from that of the facility, the names of the persons in control of the facility. The Department may require additional information, including affirmative evidence of the applicant's ability to comply with this regulation. Corporations or partnerships shall be registered with the South Carolina Office of the Secretary of State. Other required application information includes:

1. A copy of the business license, as applicable;
2. A copy of the facility's emergency evacuation plan (See Section 1502);
3. A copy of the Nursing Home Administrator's license;
4. Articles of Incorporation or Partnership documents, as applicable;
5. A licensing fee (See Section 202);
6. A written agreement with a public fire department arranging for emergency response in case of fire, if applicable (See Section 1601.B).

I. Licensee. The Licensee shall: (II)

1. Have reputable and responsible character;
2. Be knowledgeable of the content of this regulation; and

3. Be responsible for implementing this regulation in the facility.

J. License Renewal. For a license to be renewed, applicants shall file an application with the Department, pay a licensing fee, and shall not be under consideration for or undergoing enforcement actions by the Department. (II)

K. Change of License. A licensee shall request issuance of a new or amended license by application to the Department prior to any of the following circumstances: (II)

1. Change of licensee (requires a new license number);
2. Change of licensed bed capacity;
3. Change of facility location from one geographic site to another (requires a new license number).

L. Change of Facility Name or Address. Changes in facility name or address (as notified by the post office) shall be accomplished by application or by letter from the licensee. (II)

M. Facilities Owned and Operated by the Federal Government. A nursing home license shall not be required for, nor shall such a license be issued to facilities owned and operated by the federal government or facilities providing room, board, and personal care which do not require the technical skill, services or supervision of a licensed nurse.

202. License Fees

A. Licensing Fees. A nonrefundable initial and annual licensing fee of ten dollars (\$10.00) per licensed bed shall be submitted to the Department. Such fee shall be made payable by credit card, check or money order to the Department.

B. Late Fee. Failure to submit a license renewal application or fee to the Department by the license expiration date may result in a late fee of seventy-five dollars (\$75.00) or twenty-five percent (25%) of the licensing fee amount, whichever is greater, in addition to the licensing fee. Continual failure to submit completed and accurate renewal applications and/or fees by the time period specified by the Department may result in enforcement actions. (II)

203. Exceptions to Licensing Standards

The Department may make exception(s) to these standards, providing an option for compliance, when it is determined that the health and safety of residents are not compromised and provided the standard(s) is not specifically required by statute. In the event of a licensee change, exceptions are not transferable to the new licensee unless approved by the Department.

SECTION 300 - ENFORCING REGULATIONS

301. General

The Department shall utilize inspections, investigations, consultations, and other pertinent documentation regarding a proposed or licensed facility in order to enforce this regulation.

302. Inspections and Investigations

A. An inspection shall be conducted prior to initial licensing. Inspections shall be conducted as deemed appropriate by the Department. (I)

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B. All facilities, proposed facilities, or unlicensed facilities are subject to inspection or investigation at any time without prior notice by individuals authorized by South Carolina Code of Laws. (II)

C. Individuals authorized by the Department shall be granted access to all properties and areas, objects, and records. If photocopies are made for the Department inspector, they shall be used only for purposes of enforcement of regulations and confidentiality shall be maintained except to verify individuals in enforcement action proceedings. Physical area of inspections shall be determined by the extent to which there is potential impact or effect upon residents as determined by the inspector. (I)

D. A facility or proposed facility found noncompliant with the standards of this regulation shall submit an acceptable written plan of correction to the Department that shall be signed by the administrator and returned by the date specified on the report of inspection or investigation. The written plan of correction shall describe: (II)

1. The actions taken to correct each cited deficiency;
2. The actions taken to prevent recurrences (actual and similar);
3. The actual or expected completion dates of those actions.

E. Reports of inspections or investigations conducted by the Department, including the response(s) by the facility or proposed facility, shall be provided to the public upon written request with the redaction of the names of those persons in the report as provided by S.C. Code Ann. Sections 44-7-310 and 44-7-315 (1976, as amended).

303. Consultations

Consultations may be provided by the Department as requested by the facility or as deemed appropriate by the Department.

SECTION 400 - ENFORCEMENT ACTIONS

401. General

A. When the Department determines that a licensee, proposed licensee, or an unlicensed facility owner is in violation of statutory provisions, rules, or regulations relating to the operation of a facility, the Department, upon proper notice to the licensee, may impose a monetary penalty and/or deny, suspend, revoke, or refuse to issue or renew a license.

B. Food service permits may be revoked or suspended for violations in accordance with R.61-25.

402. Violation Classifications

Violations of standards in this regulation are classified as follows:

A. Class I violations are those that the Department determines to present an imminent danger to the health and safety of the persons in the facility or a substantial probability that death or serious physical harm could result therefrom. A physical condition or one (1) or more practices, means, methods or operations in use in a facility may constitute such a violation. The condition or practice constituting a Class I violation shall be abated or eliminated immediately unless a fixed period of time, as stipulated by the Department, is required for correction. When a specific time is designated for correction, each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

B. Class II violations are those, other than Class I violations, that the Department determines to have a negative impact on the health and safety of persons in the facility. The citation of a Class II violation may specify the time within which the violation is required to be corrected. When a specific time is designated for correction, each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

C. Class III violations are those that are not classified as Class I or II in these regulations or those that are against the best practices as interpreted by the Department. The citation of a Class III violation may specify the time within which the violation is required to be corrected. When a specific time is designated for correction, each day such violation exists after expiration of the time established by the Department shall be considered a subsequent violation.

D. The notations, “(I)” or “(II)” placed within sections of this regulation, indicate those standards are considered Class I or II violations, respectively, if they are not met. Standards not so annotated are considered Class III violations.

E. In arriving at a decision to take enforcement action, the Department will consider the following factors: the number and classification of violations, including repeat violations; specific conditions and their impact or potential impact on health and safety of the residents; efforts by the facility to correct cited violations; behavior of the licensee that would reflect negatively on the licensee’s character, such as illegal or illicit activities; overall conditions of the facility; history of compliance; any other pertinent conditions that may be applicable to statutes and regulations.

F. When a decision is made to impose monetary penalties, the Department may invoke S.C. Code Ann. Section 44-7-320(C) (1976, as amended), to determine the dollar amount or may utilize the following schedule as a guide to determine the dollar amount:

**Frequency of violation
of standard within a
thirty-six-month (36-month) period:**

FREQUENCY	CLASS I	CLASS II	CLASS III
1st	\$500 - 1,500	\$300 - 800	\$100 - 300
2nd	1,000 - 3,000	500 - 1,500	300 - 800
3rd	2,000 - 5,000	1,000 - 3,000	500 - 1,500
4th	5,000	2,000 - 5,000	1,000 - 3,000
5th	7,500	5,000	2,000 - 5,000
6th and more	10,000	7,500	5,000

G. Any Department decision involving the issuance, denial, renewal, suspension, or revocation of a license and/or the imposition of monetary penalties where an enforcement action order has been issued may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

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SECTION 500 - POLICIES AND PROCEDURES

501. General (II)

A. There shall be written policies and procedures addressing the manner in which the requirements of this regulation shall be met. The written policies and procedures shall accurately reflect actual facility practice regarding care, treatment, procedures, services, record keeping and reporting, admission and transfer, physician services, nursing services, social services, resident rights and assurances, medication management, pharmaceutical services, meal service operations, emergency procedures, fire prevention, maintenance, housekeeping and infection control, the operation of the facility, and other special care and procedures as identified in this section. The policies and procedures shall address the provision of any special care offered by the facility that would include how the facility shall meet the specialized needs of the affected residents such as Alzheimer's disease and/or related dementia, physically or developmentally disabled, in accordance with any laws that pertain to that service offered, *e.g.*, Alzheimer's Special Care Disclosure Act.

B. Specifically, there shall be written policies and procedures to:

1. Assure that residents do not develop pressure-related wounds unless the resident's clinical condition demonstrates that they were unavoidable and to address treatment of existing pressure-related wounds;

2. Address resident exit-seeking and elopement, including prevention and actions to be taken in the event of occurrence;

3. Implement advance directives in accordance with S.C. Code Ann. Sections 44-77-10, *et seq.* (1976, as amended), including provisions to inform and provide written information to all adult residents concerning the right to accept or refuse medical treatment and, at the individual's option, formulate an advance directive. The policies shall not condition treatment or admission upon whether the individual has executed or waived an advance directive;

4. Control the use and application of physical restraints and all facility practices that meet the definition of a restraint, such as bed rails used to keep a resident from getting out of bed;

5. Address the conditions that would be acceptable for the safe operation of a microwave oven in a resident room in accordance with the resident's ICP. A facility may elect to prohibit microwave ovens in resident rooms.

C. All policies and procedures shall:

1. Establish a time period for review of policies and procedures in writing and such reviews shall be documented;

2. Be revised as appropriate in order to reflect actual facility practice;

3. Be accessible to staff, printed or electronically, at all times.

D. If the facility permits any portion of a resident's record to be generated by electronic or optical means, there shall be policies and procedures to prohibit the use or authentication by unauthorized users.

SECTION 600 - STAFF/TRAINING**601. General (II)**

A. Appropriate staff members in numbers and training shall be provided to perform those duties that result in compliance with the regulation, to suit the needs and condition of the residents, and to meet the demands of effective emergency on-site action that might arise. Training requirements and qualifications for the tasks performed shall be in compliance with all State, Federal, and local laws, and current professional organizational standards.

B. Staff members of the facility shall not have a prior conviction or pled no contest (*nolo contendere*) for child or adult abuse, neglect, or mistreatment, or any other felony. The facility shall coordinate with appropriate abuse-related registries prior to the employment of staff. (I)

C. Direct care staff members, in addition to meal service staff, shall have at least the following qualifications: (I)

1. Ability to render care and services to residents in an understanding and gentle manner;
2. Sufficient education to be able to perform their duties;
3. A working knowledge of regulations applicable to their scope of work;
4. Be an adult, or, if not an adult, the facility shall assure that there is compliance with State, Federal, and local laws pertaining to the employment of children.

D. There shall be accurate current information maintained regarding all staff members of the facility that shall include:

1. Name, address and telephone number;
2. Date of hire;
3. Past employment, experience, and education;
4. Professional licensure or registration number or certificate or letter of completion;
5. Position in the facility and job description;
6. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, job duties, in-service training and on-going education;
7. Health status, health assessment, and tuberculin testing results;
8. Evidence that a criminal record check has been completed;
9. For former staff members, the date of separation;
10. Date of initial resident contact may be maintained by the facility.

E. Time schedules shall be maintained indicating the numbers and classification of all staff, including relief staff, who work on each shift of duty. The time schedules shall reflect all changes so as to indicate who actually worked.

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F. Staff members shall not have an active dependency on a psychoactive substance(s) that would impair his or her ability to perform assigned duties.

G. Staff members shall display identification in accordance with facility policies and procedures that is visible at all times while on duty.

H. When a facility engages a source other than the facility to provide services normally provided by the facility, *e.g.*, staffing, training, recreation, meal service, social services, professional consultant, maintenance, transportation, there shall be a written agreement with the source that describes how and when the services are to be provided, the exact services to be provided, and the requirement that these services are to be provided by qualified individuals. The source shall comply with this regulation in regard to resident care, treatment, services, and rights.

602. Criminal Record Check (I)

Prior to employing or contracting with any individual, the facility shall conduct a criminal record check in accordance with S.C. Code Ann. Article 23, Section 44-7-2910, *et seq.*, (1976, as amended).

603. Administrator

A. Each facility shall have a full-time licensed administrator. (II)

B. The facility administrator shall be licensed as a nursing home administrator in accordance with S.C. Code Ann. Section 40-35-30 (1976, as amended). In addition, all other applicable provisions of S.C. Code Ann. Title 40, Chapter 35 (1976, as amended), shall be followed. (II)

C. The administrator shall exercise judgment that reflects that he or she is in compliance with these regulations and shall demonstrate adequate knowledge of these regulations. (II)

D. A staff member shall be designated, by name or position, in writing, to act in the absence of the administrator, *e.g.*, a listing of the lines of authority by position title, including the names of the individuals filling these positions. (II)

E. The administrator shall have sufficient freedom from other responsibilities and duties to carry out the functions associated with the position.

F. No individual may be the administrator of more than one (1) nursing home. (II)

604. Direct Care Staff (II)

A. There shall be direct care staff adequate in number and skill in the facility at all times to provide nursing and related care and services to attain or maintain the highest practicable physical, mental, and psychosocial health and safety of each resident, as determined by resident assessments and ICPs. Direct care staff shall be assigned only duties for which they are trained.

B. Licensed nurse staff members shall be currently and continuously licensed to practice nursing in South Carolina during the period they are staff members. Only individuals appropriately licensed may perform duties requiring a registered or licensed practical nurse. (I)

C. Within eighteen (18) months of the effective date of this regulation, persons working in the facility as nurse aides shall be certified in South Carolina. As an exception, facility nonlicensed/noncertified staff who are enrolled in a nurse aide training and competency evaluation program approved by the S.C. Department of Health and Human Services and who have been working in the facility four (4) months or less are exempt

from Section 604.C. Licensed nurses or applicants for such licensure who have been granted a permit to practice nursing in accordance with rules adopted by the South Carolina Board of Nursing are exempt from Section 604.C. (I)

605. Medical Staff (I)

The facility shall have a medical director who is a physician who shall be responsible for implementation of policies and procedures that pertain to the care and treatment of the residents and the coordination of medical care in the facility.

606. Staffing (II)

A. Licensed Nursing Staff. An adequate number of licensed nurses shall be on duty to meet the total nursing needs of residents. Licensed nursing staff shall be assigned to duties consistent with their scope of practice as determined through their licensure and educational preparation.

1. The facility shall designate a registered nurse as a full-time Director of Nursing. Another registered nurse, who is employed by the licensee, shall be designated in writing to act in his or her absence. In facilities with a licensed bed capacity of twenty-two (22) or fewer beds, the Director of Nursing may be included in the requirements of Section 606.A.2.

2. There shall be at least one (1) licensed nurse per shift for each staff work area. If there are more than forty-four (44) residents per staff work area, there shall be two (2) licensed nurses on first shift and at least one (1) licensed nurse on second and third shift.

3. At least one (1) registered nurse shall be on duty in the facility, or on call, whenever residents are present in the facility.

4. An administrator who is a registered nurse or licensed practical nurse shall not be included in meeting the staffing requirements of this section.

B. Nonlicensed Nursing Staff. The required number of nurse aides and other nonlicensed nursing staff shall be determined by the number of residents assigned to beds at the facility. Additional staff members shall be provided if the minimum staff requirements are inadequate to provide appropriate care and services to the residents of a facility.

1. Nonlicensed nursing staff shall be provided to meet at least the following resident-to-staff ratio schedule:

- a. Nine to one (9 to 1) for shift one (1);
- b. Thirteen to one (13 to 1) for shift two (2);
- c. Twenty-two to one (22 to 1) for shift three (3).

2. When nonstaff members are utilized as sitters or attendants, they shall comply with facility policies and procedures.

C. In those facilities utilizing two (2) twelve-hour (12-hour) shifts, both the licensed and nonlicensed staffing ratios for shift one (1) apply to the twelve-hour (12-hour) shift occurring primarily during the day, and both the licensed and nonlicensed staffing ratios for shift three (3) apply to the twelve-hour (12-hour) shift occurring primarily during the night.

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D. In settings and on a nonroutine basis where there is more than one (1) type of level of care, *e.g.*, community residential care, independent living, staff members from the nursing home may temporarily provide assistance in special situations to one (1) or more of the other areas, but at no time may staffing levels in any area of the nursing home fall below minimum licensing standards or diminish the care and services provided.

607. Inservice Training (II)

A. Staff members shall be provided the necessary training to perform the duties for which they are responsible.

B. Before performing any duties, all newly-hired staff members shall be oriented to the facility organization and physical plant, specific duties and responsibilities of staff members, and residents' needs. All staff members shall be instructed in the provisions of S.C. Code Ann. Section 43-35-5 *et seq.* (1976, as amended), "Omnibus Adult Protection Act" and S.C. Code Ann. Section 44-81-10 *et seq.* (1976, as amended), "Bill of Rights for Residents of Long-Term Care Facilities" as well as other rights and assurances as required in this regulation.

C. All staff shall be provided inservice training programs that identify training needs related to problems, needs, care of residents and infection control and are sufficient to assure staff's continuing competency. Training for the tasks each staff member performs shall be conducted in order to provide the care, treatment, procedures, and/or services delineated in Section 1000.

D. All licensed nurses shall possess a valid Healthcare Provider cardio-pulmonary resuscitation (CPR) certificate within six (6) months of their first day on the job in the facility. (I)

E. Those staff members who operate motor vehicles that transport residents shall have a valid driver's license.

F. Training shall be provided to staff members by appropriate resources, *e.g.*, licensed or registered individuals, video tapes, books, in context with their job duties and responsibilities, prior to their date of initial resident contact (unless otherwise as noted below) and at a frequency determined by the facility, but at least annually. (I)

1. All staff members:

a. Emergency procedures and disaster preparedness to address various types of potential disasters such as evacuation, bomb threat, earthquake, flood, hurricane, tornado and others within forty-eight (48) hours of their first day on the job in the facility (See Section 1500);

b. Fire response training (See Section 1603);

c. Confidentiality of resident information and records and the protection of resident rights (review of "Bill of Rights for Residents of Long-Term Care Facilities," *etc.*).

2. Direct care staff members, all of the training listed in Section 607.F.1, and:

a. Management/care of individuals with contagious and/or communicable disease, *e.g.*, hepatitis, tuberculosis, HIV infection;

b. Use of restraints that promote resident safety, including alternatives to physical and chemical restraints, in accordance with the provisions of Section 1012 (for designated staff members only);

c. Prevention of pressure-related wounds;

d. Aseptic techniques, such as handwashing and scrubbing practices, proper gowning and masking, dressing care techniques, disinfecting and sterilizing techniques, and the handling and storage of equipment and supplies.

608. Health Status (II)

A. All staff members who have contact with residents shall have a health assessment (in accordance with Section 101.II) within three (3) months prior to date of hire or initial resident contact.

B. The health assessment shall include tuberculosis screening in the manner designated by guidelines established by the Department.

C. If a staff member is working at multiple facilities operated by the same licensee, copies of his or her record for tuberculin testing results and the pre-employment health assessment shall be acceptable at each facility.

609. Volunteers

A. If the facility has a volunteer program, a facility staff person shall direct the program. Community groups such as Boy and Girl Scouts, church groups, civic organizations or individuals that may occasionally present programs, activities, or entertainment in the facility shall not be considered volunteers. Volunteers shall be subject to the same standards regarding resident confidentiality and practice as the facility staff. Volunteers shall consult with licensed staff prior to any changes in resident care or treatment. The facility may elect to prohibit volunteers to work in the facility.

B. The licensee is responsible for all the activities that take place in the facility including the coordination of volunteer activities. (II)

1. Volunteers shall receive the orientation, training, and supervision necessary to assure resident health and safety before performing any duties. The orientation program shall include, but not be limited to:

- a. Resident rights;
- b. Confidentiality;
- c. Disaster preparedness;
- d. Emergency response procedures;
- e. Safety procedures and precautions; and
- f. Infection control.

2. There shall be accurate current information maintained regarding all volunteers that shall include:

- a. Name, address and telephone number;
- b. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, training, and duties;
- c. Date of initial resident contact may be maintained by the facility, if applicable.

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3. Facilities shall require that volunteers sign in and out with staff of the facility upon entering or leaving the facility. Volunteers shall wear legible name and title badges that are visible at all times while on duty.

4. Volunteers and paid feeding assistants (as defined in the federal regulations on paid feeding assistants) shall not be included in the minimum staffing requirements of Section 606.

C. At a minimum, volunteers shall be given information necessary to implement medical and physical precautions related to the residents with whom they work and shall respect all aspects of confidentiality. Volunteers shall not take the place of qualified staff.

D. Direct care volunteers shall have the ability to render care and services to residents in an understanding and gentle manner. (I)

E. Documentation maintained for direct care volunteers shall include: (II)

1. A health assessment (in accordance with Section 608) within three (3) months prior to initial date of volunteering or initial resident contact;

2. Familiarization with the disaster plan (See Section 1502) and documented instructions as to any required actions;

3. Fire response training (See Section 1603) within seven (7) days of his or her first day as a direct care volunteer and at least annually thereafter;

4. A criminal record check (See Section 602) completed prior to working as a direct care volunteer;

5. Determination of TB status (See Section 1803) prior to initial resident contact or his or her first day working as a direct care volunteer;

6. Annual influenza vaccination and hepatitis B vaccination series (See Section 1806) unless the vaccine is medically contraindicated or the person is offered the vaccination and declined. In either case, the decision shall be documented.

610. Private Sitters

A. If a resident or responsible party has not agreed in writing with the facility to not have a private sitter and chooses to employ a private sitter for use in the facility, the facility may establish a formalized private sitter program that shall be directed by a facility staff member.

1. The facility shall assure that private sitters have been chosen in accordance with the Bill of Rights for Residents of Long-Term Care Facilities.

2. The facility shall establish written policies and procedures for the private sitter program that includes an orientation to the facility consisting, at least, of the following:

a. Residents' rights;

b. Confidentiality;

c. Disaster preparedness;

d. Emergency response procedures;

- e. Safety procedures and precautions; and
 - f. Infection control.
3. There shall be accurate current information maintained regarding private sitters including:
- a. Name, address and telephone number;
 - b. Documentation of orientation to the facility, including residents' rights, regulation compliance, policies and procedures, training, and duties;
 - c. Date of initial resident contact may be maintained by the facility, if applicable.
- B. The facility shall maintain the following documentation regarding private sitters:
- 1. A health assessment (in accordance with Section 608) within three (3) months prior to initial resident contact or his or her first day working as a private sitter;
 - 2. A criminal record check (See Section 602) completed prior to working as a private sitter;
 - 3. Determination of TB status (See Section 1803) prior to initial resident contact or his or her first day working as a private sitter;
 - 4. Annual influenza vaccination and hepatitis B vaccination series (See Section 1806).
- C. Private sitters shall not be included in the minimum staffing requirements of Section 606.
- D. Private sitters shall sign in and sign out with facility staff upon entering or leaving the facility. Private sitters shall display identification in accordance with facility policies and procedures that is visible at all times while on duty.

SECTION 700 - REPORTING

701. Incidents

- A. A record of each incident involving residents or staff members or volunteers, occurring in the facility or on the facility grounds, shall be reviewed, investigated if necessary, evaluated in accordance with facility policies and procedures, and retained.
- B. Serious incidents and/or medical conditions as defined in Section 701.C and any sudden or unexpected illness or medication administration error resulting in death or inpatient hospitalization shall be reported immediately via telephone to the attending physician and the resident's next-of-kin or responsible party. (I)
- C. A serious incident is one which results in death or a significant loss of function or damage to a body structure, not related to the natural course of a resident's illness or underlying condition or normal course of treatment, and resulting from an incident occurring within the facility or on the facility grounds. A serious incident shall be considered as, but not limited to:

- 1. Falls or trauma resulting in fractures of major limbs or joints;
- 2. Resident suicides;
- 3. Medication errors;

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4. Resident death or injury in restraints;
5. Criminal events or assaults against residents;
6. Medical equipment errors; or
7. Resident neglect or exploitation, suspected or confirmed resident abuse.

D. The Department's Division of Health Licensing shall be notified in writing not later than ten (10) days of the occurrence of a serious incident.

E. Reports submitted to the Department shall contain at a minimum: facility name, resident age and sex, date of incident, location, witness names, extent and type of injury and how treated, *e.g.*, hospitalization, identified cause of incident, internal investigation results if cause unknown, identity of other agencies notified of incident and the date of the report.

F. Incidents where residents have left the premises without notice to staff members of intent to leave and have not returned to the facility within twenty-four (24) hours shall be reported to the administrator or his or her designee, local law enforcement, and the resident's responsible party, when appropriate. The Division of Health Licensing shall be notified in writing not later than ten (10) days of the occurrence.

G. Medication errors and adverse medication reactions shall be reported immediately after discovery to the prescriber and other staff in accordance with facility policies and procedures.

H. Changes in the resident's condition, to the extent that serious health concerns, *e.g.*, heart attack, are evident, shall be reported to the attending physician and the next-of-kin or responsible party in a timely manner, consistent with the severity or urgency of the change in accordance with facility policies and procedures. (I)

I. Abuse and suspected abuse, neglect, or exploitation of residents shall also be reported to the South Carolina Long-Term Care Ombudsman Program in accordance with S.C. Code of Law Section 43-35-25 (1976, as amended).

702. Fire/Disasters (II)

A. The Division of Health Licensing shall be notified immediately via telephone or fax regarding any fire, regardless of size or damage that occurs in the facility, and followed by a complete written report to include fire department reports, if any, to be submitted within a time period determined by the facility, but not to exceed seven (7) business days.

B. Any natural disaster in the facility which requires displacement of the residents, or jeopardizes or potentially jeopardizes the safety of the residents, shall be reported to the Division of Health Licensing via telephone or fax immediately, with a complete written report that includes the fire department report from the local fire department, if appropriate, submitted within a time period as determined by the facility, but not to exceed seven (7) business days.

703. Communicable Diseases and Animal Bites (I)

All cases of reportable diseases, animal bites, any occurrences such as epidemic outbreaks or poisonings, or other unusual occurrences that threaten the health and safety of residents or staff shall be reported in accordance with R.61-20.

704. Administrator Change

The Division of Health Licensing shall be notified in writing by the licensee within ten (10) days of any change in administrator. The notice shall include at a minimum the name of the newly-appointed individual, the effective date of the appointment, and a copy of the administrator's license.

705. Joint Annual Report

Facilities shall complete and return a "Joint Annual Report" to the Department's Planning and Certificate of Need Division within the time period specified by that Division.

706. Facility Closure

A. Prior to the permanent closure of a facility, the Department's Division of Health Licensing shall be notified in writing of the intent to close and the effective closure date. Within ten (10) days of the closure, the facility shall notify the Division of Health Licensing of the provisions for the maintenance of the facility records as required by regulation. On the date of closure, the current original license shall be returned to the Division of Health Licensing.

B. In instances where a facility temporarily closes, the Division of Health Licensing shall be given written notice within a reasonable time in advance of closure. At a minimum this notification shall include, but not be limited to, the reason for the temporary closure, the manner in which the records are being stored, and the anticipated date for reopening. The Department shall consider, upon appropriate review, the necessity of inspecting and determining the applicability of current construction standards to the facility prior to its reopening.

707. Zero Census

In instances when there have been no residents in a facility for any reason, for a period of ninety (90) days or more, the facility shall notify, in writing, the Department's Division of Health Licensing no later than the one-hundredth (100th) day following the date of discharge or transfer of the last active resident. If the facility has no residents for a period longer than one (1) year, and there is a desire to re-open, the facility shall re-apply to the Department and shall be subject to all licensing requirements at the time of that application, including CON review and construction-related requirements for a new facility. Instances of zero census do not relieve the facility of the requirement to pay licensing fees that may be due during that time.

SECTION 800 - RESIDENT RECORDS**801. Content (II)**

A. All entries in the resident record shall be legible and complete, and shall be separately authenticated and dated promptly by the individual, identified by name and discipline, who is responsible for ordering, providing or evaluating the service or care furnished. Authentication may include written signatures or computerized or electronic entries. If an entry is signed on a date other than the date it was made, the date of the signature shall also be entered. Although use of initials in lieu of signatures is not encouraged, initials will be accepted provided such initials can be readily identified within the resident record.

B. Contents of the resident record may be stored in separate files, in separate areas within the facility, and the record shall include the following information:

1. Medical history and physical examination;
2. Consent form for treatment signed by the resident or his or her legal representative;

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3. Care and services agreement;
4. Healthcare directives and special information, *e.g.*, advance directive information, do-not-resuscitate (DNR) orders, allergies;
5. Incidents involving the resident; (I)
6. Medical treatment;
7. Orders, including telephone and standing orders, for all medication, care, services, therapy, procedures, and diet from physicians or other legally authorized healthcare providers, which shall be completed prior to, or at the time of admission, and subsequently, as warranted;
8. Individual Care Plan; (I)
9. Provisions for routine and emergency medical care, to include the name and telephone number of the resident's physician;
10. Assessments and progress notes, *e.g.*, dietary, activity, therapy;
11. Record of administration of each dose of medication; (I)
12. Record of the use of restraints, if applicable, including time, type, reason and authority for applying; (I)
13. Treatment, procedure, wound care report (dictated or written into the record after treatment, procedure, or wound care) to include at least: (I)
 - a. Description of findings;
 - b. Techniques utilized to perform treatments and procedures;
 - c. Specimens removed, if applicable;
 - d. Name of provider;
14. Progress notes generated by physicians and healthcare professionals;
15. Notes of observation, including temperature, pulse, respiration, blood pressure and weight when indicated by physician's orders or by a change in the resident's condition; (I)
16. Special procedures and preventive measures performed, *e.g.*, isolation for symptoms, diagnosis, and/or treatment of infectious conditions including but not limited to tuberculosis, influenza, pneumonia, therapies;
17. Reports of all laboratory, radiological, and diagnostic procedures along with tests performed and the results appropriately authenticated; (I)
18. Consultations by physicians or other healthcare professionals;
19. Photograph of resident, if the resident or his or her responsible party approves;
20. Date and hour of discharge or transfer, as applicable;

21. Discharge and/or transfer summary, including care and condition at discharge or transfer, date and time of discharge or transfer, instructions for self-care, instructions for obtaining post-treatment or procedure emergency care, and signature of physician authorizing discharge or transfer;

22. Date and circumstances of death, as applicable.

C. Except as required by law, records may contain written and interpretative findings and reports of diagnostic studies, tests, and procedures, *e.g.*, interpretations of imaging technology and video tapes without the medium itself.

D. Unauthorized alterations of information in the record are prohibited. Corrections to entry errors shall include the date the correction was made and the signature of the individual making the correction.

E. Records shall be maintained on all outpatients and shall be completed immediately after treatment is rendered. These records shall contain sufficient identification data, a description of what was done and/or prescribed for the outpatient and shall be signed by the attending physician. When an outpatient is admitted as a resident of the facility, all of the outpatient records shall be made a part of his or her permanent resident record.

802. Physician Orders (II)

A. Physician Orders. The resident's physician shall sign and date all treatment, care, and medication orders, including standing orders.

1. The use of a rubber stamp signature or electronic representation is acceptable under the following conditions:

a. The physician whose signature the rubber stamp or electronic representation denotes is the only one who has possession of the stamp or electronic representation and is the only one who uses it; and

b. The physician places in the administrative offices of the facility a signed statement to the effect that he or she is the only one who has the stamp or electronic representation and is the only one who will use it.

2. The use of rubber stamp signatures is not permissible on orders for "controlled substances."

3. Consultative reports and diagnostic procedures requested by a physician, *e.g.*, radiological, laboratory reports, shall be acknowledged by the physician signature. (I)

B. Verbal Orders. (I)

1. All orders for medication, treatment, care and diet shall be signed and dated by the individual receiving the orders.

2. Verbal orders received shall include the date of the order, description of the order, and identification of the physician or other legally authorized healthcare provider and the individual receiving the order.

3. Verbal orders in other specialized departments or services, as authorized in facility policy and procedures, may be received by those departments or services, *e.g.*, orders pertaining to physical therapy may be received by a physical therapist.

4. A committee (to include representation by physicians treating residents at the facility, a pharmacist, and the Director of Nursing) shall identify and list categories of diagnostic or therapeutic verbal orders

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(associated with any potential hazard to the resident) that shall be authenticated by the prescriber within a limited time period (within two (2) days after the order is given). A copy of this list shall be maintained at each staff work area.

a. Verbal orders designated by the committee as requiring authentication within a limited time period shall be authenticated and countersigned and dated by the prescriber or designee within a time period defined in facility policies and procedures, but in no case more than two (2) days after the order was given.

b. All other verbal orders shall be countersigned and dated by the prescriber or his or her designee within sixty (60) days.

c. Verbal orders for restraints shall be authenticated in the manner prescribed in Section 1012.B.

C. Standing Orders. (I)

1. Physician's standing orders, except for restraints, are permissible but shall take into consideration specific circumstances such as medication allergies, gender-specific orders, and the pertinent physical condition of the resident, when appropriate.

2. Over-the-counter medications may be utilized on a physician's standing orders. Controlled or legend medications shall be an individual order reduced to writing on the physician's order sheet as either a routine or *pro re nata* (prn) order and shall not be utilized on a physician's standing order unless the medications have been identified by the facility as those commonly used in routine situations. Each standing order shall include on the order sheet the following, as appropriate:

- a. Name of the medication;
- b. Strength of the medication;
- c. Specific dose (or dose range) of the medication;
- d. Mode of administration;
- e. Reason for administration;
- f. Time interval between doses for administering the medication; and
- g. Maximum dosage or number of times to be administered in a specific time period.

3. Standing orders shall be signed and dated by the prescribing physician initially and reviewed at least annually thereafter.

D. Standing orders regarding restraints are prohibited.

803. Individual Care Plan (ICP) (II)

A. The facility shall develop an ICP with participation by, and as evidenced by the signatures of the resident or responsible party, or documentation that the facility attempted to obtain the signatures, and an interdisciplinary team of qualified individuals, within fourteen (14) days of admission. The ICP shall be reviewed and/or revised as changes in resident needs occur, but not less than quarterly by the interdisciplinary team.

B. The ICP shall describe:

1. The needs of the resident, including the services that are to be furnished, *i.e.*, what assistance, how much, who will provide the assistance, how often, and when;
2. Advance directives and healthcare power-of-attorney, as applicable;
3. Recreational and social activities that are suitable, desirable, and important to the resident;
4. Dietary needs and preferences of resident as approved by a physician;
5. Discharge planning, to include assessing continuing care needs and developing a plan designed to assure the resident's needs will be met after discharge or transfer.

804. Record Maintenance

A. Organization.

1. The administrator shall designate a staff member the responsibility for the maintenance of resident and outpatient records.
2. Resident and outpatient records shall be properly indexed and filed for ready access by staff members.

B. Accommodations.

1. The licensee shall provide space, supplies, and equipment adequate for the maintenance, protection and storage of resident and outpatient records.
2. The facility shall maintain records pertaining to resident personal funds accounts, as applicable, financial matters, statements of resident rights and responsibilities, and resident possessions (provided that the facility has been notified by the resident or responsible party that items have been added or removed).
3. The licensee shall determine the medium in which information is stored. The information shall be readily retrievable and accessible by staff, as needed.
4. Records of residents and outpatients shall be maintained for at least six (6) years following discharge or death. Facilities that microfilm (or use other processes that accurately reproduce or form a durable medium) inactive records before six (6) years have expired shall process the entire record. Records may be destroyed after six (6) years provided that:
 - a. Records of minors must be retained until after the expiration of the period of election following achievement of majority as prescribed by statute; and
 - b. The facility retains an index, register, or summary cards providing such basic information as dates of admission and discharge, and name of responsible physician for all records so destroyed.
5. Records of residents and outpatients are the property of the facility and shall not be removed without court order. As an exception, when a resident moves from one licensed facility to another within the same provider network (same licensee), the original record may follow the resident; the sending facility shall maintain documentation of the resident's transfer and discharge date and identification information. In the event of change of licensee, all resident records or copies of resident records shall be transferred to the new licensee.

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6. When a resident is transferred from one facility to another, a transfer summary, to include copies of relevant documents, shall accompany the resident to the receiving facility at the time of transfer or be forwarded immediately after the transfer. Documentation of the information forwarded shall be maintained in the resident record.

7. Upon discharge or death of a resident, the record shall be completed and filed in an inactive file within a time period as determined by the facility, but no later than thirty (30) days after discharge or death.

8. Facilities shall comply with R.61-19 with regard to vital statistics.

C. Access.

1. The resident and outpatient record is confidential. Records containing protected or confidential health information shall be made available only to individuals granted access to that information, in accordance with State, Federal, and local laws.

2. A facility may charge a fee for the search and duplication of a resident record in accordance with S.C. Code Ann. Section 44-7-325 (1976, as amended).

D. Copies of the criminal record check results of direct care staff shall be provided to the Department upon request within a reasonable amount of time after receiving the request. A copy of the criminal record check results shall be retained at the facility.

E. Regulation-required documents other than resident records, *e.g.*, fire drills, medication destruction records, activity schedules, firefighting equipment inspections, monthly pharmacist reviews, controlled medication count sheets, emergency generator logs, shall be maintained for a minimum of twelve (12) months or until the next inspection by the Department's Division of Health Licensing, whichever is longer. Records of menus as served shall be maintained for at least thirty (30) days and available for inspection.

805. Electronic Resident Records

A. Electronic records are subject to all of the standards of this regulation.

B. A facility that maintains electronic records shall:

1. Retain the hard copy originals of any materials that cannot be electronically stored;
2. Employ an off-site backup storage system as protection in the event that the on-site system is damaged or destroyed;
3. Use an imaging mechanism that is able to copy documents with signatures;
4. Assure that records, once put in electronic form, are unalterable.

C. Electronic signatures may be used any place in the resident or outpatient record that requires a signature, provided signature identification can be verified and an electronic signature may be legally used. Electronic authorization shall be limited to a unique identifier (confidential code) used only by the individual making the entry to preclude the improper or unauthorized use of any electronic signature.

SECTION 900 - ADMISSION/RETENTION**901. General**

A. Individuals seeking admission shall be identified as appropriate for the level of care, services, or assistance offered. The facility shall establish admission criteria that are consistently applied and comply with State, Federal, and local laws and regulations. (I)

B. The facility shall admit and retain only those individuals whose needs can be met by the accommodations and services for which the facility is licensed. (I)

C. Residents and/or outpatients shall be admitted to the facility only on physician orders and all care rendered under his or her direction. In the institutional nursing home setting, individuals living on that campus, but outside the nursing home may be admitted by the administrator, provided that the admission is authorized by physician order within two (2) business days of admission. (I)

D. A medical history and physical examination shall be completed in the manner prescribed in Section 1201. (II)

E. Respite care may be furnished provided there is compliance with this regulation. If the resident is regularly re-admitted in a respite status only, then a physical examination for admission is required only once every six (6) months. (I)

F. Individuals not eligible for admission or retention are:

1. Anyone who is destructive of property, self-destructive, suicidal, disturbing or abusive to other residents as determined by a physician or other legally authorized healthcare provider, unless the facility has and uses sufficient resources to appropriately manage and care for the person;

2. Anyone under eighteen (18) years of age, unless placed in a private room and written certification is obtained from the attending physician stating that proper care of the resident can be given;

3. Anyone who has need for medical care for acute illness or injury that is beyond the scope of the facility to provide, and where hospitalization is consistent with the individual's condition, prognosis, and choice; and

4. Anyone not meeting facility requirements for admission; the facility may determine who is eligible for admission and retention in its policies, provided compliance with State, Federal, and local laws and regulations is accomplished.

SECTION 1000 - RESIDENT CARE AND SERVICES**1001. General**

A. There shall be a written care and services agreement between the resident, and/or his or her responsible party, and the facility. The agreement shall be signed and completed before or at the time of admission and include and/or address at least the following:

1. An explanation of the specific care, treatment, services, or equipment provided by the facility, *e.g.*, degree of nursing care, administration of medication, provision of special diet as necessary, assistance with bathing, toileting, feeding, dressing, and mobility;

2. Disclosure of fees for all care, treatment, services, or equipment provided;

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3. Advance notice requirements to change fees;
4. Refund provisions to include when monies are to be forwarded to resident upon discharge, transfer, or relocation;
5. Transportation provisions in accordance with facility policies and procedures;
6. Discharge and transfer provisions to include the conditions under which the resident may be discharged and the agreement terminated, and the disposition of personal belongings;
7. Documentation of the explanation of the Bill of Rights for Residents of Long-Term Care Facilities and grievance procedures;
8. Arrangements for, or the provision at a specified written cost for the laundering of resident personal clothes.

B. Residents shall receive care and treatment, services, *e.g.*, routine and emergency medical care, podiatry care, dental care, counseling and medications, as ordered by a physician or other legally authorized healthcare provider. Such care shall be provided and coordinated among those responsible during the process of providing such care and modified based upon any changing needs, or, when appropriate, requests of the resident. (II)

C. Treatment and services shall be rendered in a caring and humane manner, and effectively and safely in accordance with orders from physicians or other legally authorized healthcare providers. (I)

D. Staff shall respond to a signal system call from a resident to provide care or assistance in a prompt manner.

E. Each resident shall be encouraged and assisted in self care and activities of daily living, and be given care that promotes skin integrity, proper body alignment and joint movement. (I)

F. Residents shall be neat, clean, appropriately and comfortably dressed in clean clothes, and shall be encouraged and assisted to achieve and maintain the highest level of self care and independence. Neatness and cleanliness shall include personal hygiene, skin care, shampooing and grooming of hair, shaving and trimming of facial hair, nail trimming, and being free of offensive body odors. (II)

G. The provision of care, treatment, and services shall be resident-centered and resident-directed to the fullest extent possible. Such care, treatment, and services to residents shall be guided by the recognition of and respect for cultural differences and personal preferences to assure reasonable accommodations shall be made for residents with regard to differences, such as, but not limited to, religious practices and dietary preferences.

H. Opportunities for participation in religious services shall be available. Reasonable assistance in obtaining pastoral counseling shall be provided upon request by the resident.

I. Facilities shall take an interdisciplinary approach to decrease the risk of pressure-related wounds, and institute measures to prevent and treat wounds that are consistent with each resident's clinical condition, risk factors, and goals. Such actions shall include but not be limited to: (I)

1. Body position of bed or chair bound residents changed in accordance with the ICP;
2. Proper skin care provided for bony prominences and weight bearing parts to prevent discomfort and the development of pressure areas, unless contraindicated by physician's orders.

J. Soiled or wet bed linen shall be replaced promptly with clean, dry linen and clothing after being soiled. (I)

K. Necessary actions shall be taken to prevent resident elopement. (I)

L. A facility shall have the equipment and supplies required to administer cardio-pulmonary resuscitation (CPR) to any resident when necessary and in accordance with the resident's advance directives. Equipment and supplies required to administer CPR include, but are not limited to: (I)

1. Adult-sized Pocket Mask;
2. Adult-sized Bag-Valve-Mask Ventilation Unit (BVM); and
3. Large and Medium Adult-sized Oropharyngeal airway (OPA).

M. In the event of closure of a facility for any reason, the facility shall assure continuity of care, treatment, and services by promptly notifying the resident's attending physician or other legally authorized healthcare provider and arranging for referral to other facilities.

1002. Fiscal Management (II)

A. Provisions shall be made for safeguarding money and valuables for those residents who request this assistance.

B. Residents shall manage their own money whenever possible.

C. Only residents may endorse checks made payable to them, unless a legally constituted authority has been authorized to endorse their checks.

D. Upon written request of the resident or his or her responsible party, the facility may maintain the personal monies for the resident.

E. There shall be an accurate accounting of resident's personal monies and written evidence of purchases by the facility on behalf of the residents to include a record of items or services purchased, written authorization from residents of each item or service purchased, and an accounting of all monies paid to the facility for care and services. Personal monies include all monies, including family donations. No personal monies shall be given to anyone, including family members, without written consent of the resident or his or her responsible party. If a resident's money is given to anyone by the facility, a receipt shall be obtained.

F. A written report of the balance of resident finances shall be physically provided to each resident by the facility on a quarterly basis in accordance with the Bill of Rights for Residents of Long-Term Care Facilities, regardless of the balance amount, *e.g.*, zero balance.

G. Within sixty (60) days of a resident's death or discharge, a final written account of remaining resident monies shall be made to the individual administering the resident's estate, or to the resident or the resident's responsible party upon discharge. Any personal monies due shall be refunded within thirty (30) days.

H. In the event of a licensee change, the existing licensee shall provide written verification to the new licensee that all resident monies have been transferred to the new licensee.

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1003. Recreation

A. The facility shall offer a regular and ongoing program of varied, meaningful activities designed to suit the interests and physical and cognitive capabilities of the residents who choose to participate. The facility shall provide recreational activities that provide stimulation (intellectual, physical); promote or enhance physical, mental, and/or emotional health; are age-appropriate; and are based on input from the residents and/or responsible party, as well as information obtained in the initial assessment. These activities shall include appropriate group activities and also activities for individuals with particular interests and needs.

B. Variety in planning may include some outdoor activities in suitable weather. Plans for activity involvement both on an individual and a group basis shall be developed for all residents. The planned activities may include community intergenerational programs, if applicable.

C. A staff member shall be designated as director of the resident activities program who shall be responsible for the development of the recreational program, to include responsibility for obtaining and maintaining recreational supplies. This staff member shall have sufficient time to provide and coordinate the activities program so that it fully meets the needs of the residents. Staff members responsible for providing and coordinating recreational activities for the residents shall have expertise or training and/or experience in individual and group activities. The director of resident activities shall hold at least one (1) of the following four (4) qualifications:

1. A baccalaureate degree from an accredited college or university with a major area of concentration in recreation, creative arts therapy, therapeutic recreation, art, art education, psychology, sociology, or occupational therapy; or

2. A high school diploma and three (3) years of experience in resident activities in a health care facility; or

3. Served as the facility director of resident activities on the effective date of promulgation of this regulation, and has continuously served as activities director since that time; or

4. Holds current certification from the National Certification Council for Activity Professionals, or the National Council for Therapeutic Recreation Certification.

D. The recreational supplies shall be adequate and shall be sufficient to accomplish the activities planned. Space, needed supplies, and equipment, *e.g.*, books, magazines, newspapers, games, arts and crafts, computers, radio and television, shall be provided for all pertinent activities.

E. At least one (1) current month's resident activity schedule shall be conspicuously posted in order for residents to be made aware of activities offered. This schedule shall include activities, dates, times, and locations. Residents may choose activities and schedules consistent with their interests and physical, mental, and psychosocial health. If a resident is unable to choose for him or herself, staff members shall encourage participation and assist when necessary.

F. Residents shall retain autonomous control over a wide range of activities and shall not be compelled to participate in any activity. Activities provided shall be in accordance with the ICP.

G. There shall be adequate staff to provide activity and recreational programs each day to achieve a meaningful experience for the residents. Opportunities for spontaneous activities shall be available to residents at any time. Community resources and volunteers may be utilized under the direction of the activities director to the fullest possible extent.

H. Religious services shall be considered resident activities. Every resident shall have the freedom to attend the church service of his or her choice.

I. Bedridden residents and those otherwise unable or unwilling to participate in group activities shall be provided activity to stimulate and promote their physical, spiritual, social, emotional, and intellectual health in accordance with the ICP.

J. Visiting by relatives and friends shall be encouraged, with minimum restrictions. Visiting hours shall be posted in accordance with facility policies and procedures. Reasonable exceptions to these hours shall be granted.

1004. Physician Services (II)

A. Each resident or responsible party shall designate a physician licensed to practice in South Carolina for the supervision of the care and treatment of the resident.

1. Residents shall be seen by the attending physician at least once every sixty (60) days, unless more frequent visits are indicated. As an exception, another legally authorized healthcare provider who is authorized by the attending physician in writing, may make the sixty (60) day visits and the resident or the resident's responsible party shall be notified in writing of the person who will be making the visits in lieu of the attending physician.

2. A facility shall not restrict a resident's or responsible party's choice in attending physician coverage, provided that the physician agrees to, and demonstrates that he or she will provide care in accordance with facility policies and procedures.

B. Residents who have an attending physician licensed in a state other than South Carolina shall have thirty (30) days from admission to establish an attending physician licensed in South Carolina. (I)

C. Each resident shall be informed of the name, specialty, and a way of contacting the physician responsible for his or her care.

D. At least one (1) physician shall be available on call at all times.

1005. Social Services

A. Social services for residents shall be provided by the facility. When a facility provides social services directly, there shall be a staff member designated in writing who is responsible for the program and provides the leadership and direction of the program, including the maintenance of any required records.

B. Social service history shall be obtained and documented for each resident. This history shall include social and emotional factors related to the resident's condition, information concerning home situation, financial resources and relationships with other people. The social history shall be obtained within seven (7) business days of admission. The social service history shall be utilized in the preparation of the ICP and maintained current in terms of changes in financial resources, physical condition, mental state or family situation.

C. Services shall be provided to assist all residents in addressing social, emotional and related problems or through effective arrangements with a social service agency.

D. The social services staff shall participate in discharge planning to assist residents to access inpatient, outpatient, extended care, and home health services in the community.

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1006. Dental Services

A. Within one (1) week of admission, an oral assessment by a physician, dentist or registered nurse shall be conducted to determine the consistency of diet which the resident can best manage and the condition of gums and teeth.

B. Residents shall be assisted as necessary with daily dental care. (II)

C. Each facility shall maintain names of dentists who can render emergency and other dental treatments. Residents shall be encouraged to utilize dental services of choice.

1007. Oxygen Therapy (II)

A. The facility shall provide oxygen for the treatment of residents when ordered by a physician or other legally authorized healthcare provider.

B. When oxygen is dispensed, administered, or stored, "No Smoking" signs shall be posted conspicuously. All cylinders shall be appropriately secured. As an exception, in "Smoke-Free" facilities where smoking is prohibited, and where the facility nonsmoking policy is strictly enforced, and where "Smoke-Free" signs are strategically placed at all major entrances, secondary "No Smoking" signs shall not be required in and in the vicinity of resident rooms where oxygen is being administered. "No Smoking" signs shall be required in and in the vicinity of resident rooms and all other areas of the facility where oxygen is being stored. (I)

1008. Laboratory Services

A. Laboratory services required in connection with the care or treatment to be performed shall be provided or arrangements made to obtain such services.

B. Laboratories that examine materials derived from the human body for diagnosis, prevention, or treatment purposes shall be certified by the Centers for Medicare and Medicaid Services (CMS). Some laboratory tests, *i.e.*, blood sugar levels or hemoglobin, may not require the certification; however a Clinical Laboratories Improvement Amendments (CLIA) "Certificate of Waiver" shall be obtained from the Department's CLIA Program if those tests are performed.

C. Expired laboratory supplies shall be disposed of in accordance with facility policies and procedures.

1009. Outpatient Services

A. When the facility provides outpatient services such as those described in Section 1010, a physician shall be in charge of the service.

B. Outpatient services shall be in a location that is easily accessible for all outpatients and to all necessary outpatient equipment and supplies. Adequate toilet facilities, waiting, dressing, examining, treatment, and therapy rooms shall be provided.

1010. Other Services to Residents

Other services, such as physical therapy, occupational therapy, and speech therapy, if offered as a service of the facility, shall be on orders of a physician or other legally authorized healthcare provider and administered and/or furnished by legally authorized healthcare providers. If offered, space and equipment shall be provided to accommodate the service(s).

1011. Transportation (I)

The facility shall arrange for appropriate transportation of residents to other healthcare services provided outside the facility, *e.g.* hospital, medical clinic, dentist, and in accordance with the physician's orders. If a physician's services are not immediately available and the resident's condition requires immediate medical attention, the facility shall provide or secure transportation for the resident to the appropriate healthcare providers, such as, but not limited to, physicians, dentists, physical therapists, or for treatment at renal dialysis facilities.

1012. Restraints (II)

- A. There shall be written instructions on how specific restraints shall be applied.
- B. There shall be a written order signed by the physician approving use of restraints at the time they are applied to a resident or, in case of emergency, within twenty-four (24) hours after they have been applied.
- C. During emergency restraint, residents shall be monitored, their condition recorded at least every fifteen (15) minutes, and they shall be provided with an opportunity for motion and exercise at least every thirty (30) minutes. Prescribed medications and treatments shall be administered as ordered, and residents shall be offered nourishment and fluids and given restroom privileges. (I)
- D. Only those devices specifically designed as restraints may be used. Makeshift restraints shall not be used under any circumstance. (I)

1013. Discharge/Transfer

- A. Residents shall be transferred or discharged only upon physician orders and only as appropriate in accordance with the Bill of Rights for Residents of Long-Term Care Facilities. Immediate transfer is permissible in cases of medical emergencies or where the health and safety of other residents would be endangered, in accordance with the Bill of Rights for Residents of Long-Term Care Facilities.
- B. Notification of resident discharge and transfer shall be in accordance with the Bill of Rights for Residents of Long-Term Care Facilities. In cases of transfer due to medical emergencies or instances where other residents may be endangered, the family member, if any, shall be notified within a time period that is practicable under the circumstances, but not later than twenty-four (24) hours following the transfer.
- C. Other than residents transferred back to their home, residents requiring care and/or supervision shall be transferred or discharged to a location that is licensed to provide that care and is appropriate to the resident's needs and abilities. (II)
- D. Upon transfer or discharge, the facility shall assure that resident information, medications, as appropriate, personal possessions and personal monies are released to the resident and/or the receiving facility in a manner that assures continuity of treatment, care, and services. (II)
- E. A discharge summary shall accompany each resident discharged or transferred to another licensed healthcare facility, or shall be forwarded to the receiving facility in a manner that assures continuity of care and services.
- F. The facility shall have a written transfer agreement with one (1) or more hospitals that provides reasonable assurance that transfer of residents will be made between the hospital and the facility whenever such transfer is deemed medically appropriate by the attending physician; or, the facility shall have on file documented evidence that it has attempted in good faith to effect a transfer agreement. The transfer agreement shall be dated and signed by authorized officials who are a party to the agreement. The agreement shall

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provide reasonable assurance of mutual exchange of information necessary or useful in the care and treatment of individuals transferred between the facilities. The agreement may be updated following a change of administrator; the agreement shall be updated following changes in licensee or at any other time as deemed advisable to maintain or further improve continuity of care.

SECTION 1100 - RIGHTS AND ASSURANCES

1101. General (II)

A. The facility shall comply with all current State, Federal and local laws and regulations concerning resident care, treatment, procedures, and/or services, resident rights and protections, and privacy and disclosure requirements, *e.g.*, S.C. Code Ann. Section 44-81-10 (1976, as amended), Bill of Rights for Residents of Long-Term Care Facilities, Alzheimer's Special Care Disclosure Act, and the Omnibus Adult Protection Act notice, S.C. Code Ann. Section 43-35-5, *et seq.* (1976, as amended).

B. Posted notices as required in the Bill of Rights for Residents of Long-Term Care Facilities, the Omnibus Adult Protection Act, and other notices as required by law, shall be prominently displayed in the facility.

C. The facility shall comply with all relevant State, Federal and local laws and regulations concerning discrimination, *e.g.*, Title VII, Section 601 of the Civil Rights Act of 1964.

D. Achievement of the highest level of self-care, independence and choice by residents shall be reflected in the manner in which the facility provides and promotes resident care and how the facility honors reasonable requests.

E. Residents shall be given the opportunity to provide input concerning changes in facility operational policies, procedures, services, *e.g.*, resident councils.

F. Other than the limitations of resident movement in special instances, *e.g.*, Alzheimer's unit, residents shall be assured freedom of movement. Residents shall not be locked in or out of their rooms.

G. There shall be a grievance and complaint procedure to be exercised on behalf of the residents to enforce the Bill of Rights for Residents of Long-Term Care Facilities that includes the address and telephone number of the Department's Division of Health Licensing and a provision prohibiting retaliation should the grievance right be exercised. Residents shall be made aware of this procedure and it shall be posted adjacent to the Bill of Rights for Residents of Long-Term Care Facilities.

H. Care, services, treatments, items provided by the facility, the charges, and those services that are the responsibilities of the resident shall be delineated in writing. Residents shall be made aware of such charges and services and changes to charges and services.

I. Residents shall not be requested or required to perform any type of care, treatment, or service in the facility that would normally be the duty of a staff member.

J. Information regarding advance directives shall be provided to each resident at admission.

K. The facility shall furnish itemized billing for all charges to the resident or the individual paying the bill upon request by the resident or individual.

1. Items that remain unpaid are not required to be itemized again.

2. This provision shall not apply to the contracted amount of a state or federal agency. Any amount above such contract shall be itemized as provided.

L. Residents shall be permitted to use the telephone and shall be allowed privacy when making telephone calls.

M. A quiet environment shall be provided that is the least intrusive to residents.

N. The facility shall inform residents of the resident councils (See Section 1102).

1102. Resident and Family Councils (II)

A. The facility shall allow residents to form and participate in resident councils to discuss and resolve concerns.

B. Adequate notification shall be provided to family members or to the responsible party of the resident concerning pertinent information pertaining to the operation or interest of the family council in accordance with facility policies and procedures.

C. Should there be a council, the facility administrator shall designate a staff coordinator and provide suitable private accommodations within the facility for these council(s). The staff coordinator shall assist the council(s) in scheduling regular meetings and preparing written reports of meetings for dissemination to residents of the facility.

SECTION 1200 - RESIDENT PHYSICAL EXAMINATION AND TUBERCULOSIS SCREENING

1201. General (I)

A. The admission physical examination shall be conducted by the attending physician within five (5) days prior to admission or within seven (7) business days after admission and shall address the physical condition and diagnosis of the resident. As an exception, physical examinations conducted by physicians licensed in states other than South Carolina are permitted for new admissions under the condition that residents obtain an attending physician licensed in South Carolina within thirty (30) days of admission to the facility. The physical examination information shall be updated to include new medical information if the resident's condition has changed since the last physical examination was completed.

B. The admission physical examination shall include tuberculosis screening (See Section 1804), as determined by the facility risk assessment (See Section 101.BBBB) in the manner designated by guidelines established by the Department.

C. In the event that a resident transfers from a healthcare facility licensed by the Department, as defined in S.C. Code Ann. Section 44-7-130(10) (1976, as amended), to a nursing home, an additional admission physical examination shall not be required, provided the resident transferring has had a physical examination conducted not earlier than three (3) months prior to the admission of the resident to the nursing home that addresses the physical condition and diagnosis of the resident, and meets the requirements specified in Section 1201.B unless the receiving facility has an indication that the health status of the resident has changed significantly. A discharge summary from a healthcare facility, which includes a physical examination, may be acceptable as the admission physical examination, provided the summary addresses the physical condition and diagnosis of the resident, meets the requirements specified in Section 1201.B, and the resident's physician attests to its accuracy by countersigning it. The receiving nursing home shall acquire a copy of the physical examination and tuberculosis screening, if applicable, from the licensed facility transferring the resident with the attending physician updating by signature and date.

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SECTION 1300 - MEDICATION MANAGEMENT

1301. General

A. Medications, including controlled substances, medical supplies, and those items necessary for the rendering of first aid shall be properly managed in accordance with State, Federal, and local laws and regulations. Such management shall address the securing, storing, and administering of medications, medical supplies, first aid supplies, and biologicals, their disposal when discontinued or expired, and their disposition at discharge, transfer, or death of a resident. (I)

B. Applicable medication-related reference materials such as Physicians' Desk Reference and information on the use of medications shall be readily available at each staff work area in order to provide staff members with adequate information concerning medications. At least one (1) such reference in the facility shall have been published within the previous year and none shall be older than three (3) years.

1302. Medication and Treatment Orders (II)

A. Medication and treatment, to include oxygen, shall be administered to residents only upon orders (to include standing orders) of a physician or other legally authorized healthcare provider. (I)

B. All orders (including verbal) shall be received only by licensed nurses or other legally authorized healthcare providers, and shall be authenticated and dated by a physician or other legally authorized healthcare provider pursuant to the facility's policies and procedures. This restriction shall not be construed to prohibit the issuance and acceptance of verbal orders in other specialized departments or services in accordance with facility policies and procedures, *e.g.*, orders pertaining to respiratory therapy modalities; medications administered therewith may be given to respiratory therapy personnel and physical therapy orders to physical therapists. (I)

C. Physician's orders for medication, treatment, care and diet shall be reviewed and reordered no less frequently than every two (2) months. (I)

D. All medication orders that do not specifically indicate the number of doses to be administered or the length of time the medication is to be administered shall automatically be stopped in accordance with facility policies and procedures.

1303. Administering Medication (II)

A. Medications shall be administered in accordance with orders of the attending physician, dentist or other individual legally authorized to prescribe medications or biologicals for human consumption. (I)

B. Medications and medical supplies ordered for a specific resident shall not be provided to or administered to any other resident.

C. Medications shall be administered in accordance with state practice acts. The administration of medication shall include, but not be limited to:

1. Removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container);
2. Verifying the dosage with the physician's orders;
3. Giving the individual dose to the proper resident;

4. Monitoring the ingestion or application of the dose; and

5. Promptly recording on the MAR, as it is administered, the date, time, dose given, mode of administration, and identification of the individual who administered the medication.

D. Doses of medication shall be administered by the same licensed nurse or other legally authorized healthcare provider who prepared them for administration. Preparation of doses for more than one (1) scheduled administration shall not be permitted. (I)

E. Self-administration of medications by residents is permitted only on the specific written orders of the resident's attending physician or other legally authorized healthcare provider, verified by direct contact with the resident by a licensed nurse, and recorded on the MAR by that same person. Verification and documentation shall occur at the same frequency as the medication is taken. Facilities may elect to prohibit self-administration. The facility shall not allow residents to self-administer controlled substances. (I)

F. When residents who are unable to self-administer medications leave the facility for an extended period of time, the proper amount of medications, along with dosage, mode, date, and time of administration, shall be given to a responsible individual who will be in charge of the resident during his or her absence from the facility; these details shall be properly documented in the MAR. (I)

G. At each shift change, there shall be a documented review of all Schedule II controlled substances by outgoing licensed nurses with incoming licensed nurses who shall include verification by outgoing licensed nurses that the count was correct, and if incorrect, an explanation of the discrepancy and any corrective actions taken. The review shall include controlled substances in an unsealed emergency medication kit or cart. (I)

1304. Pharmacy Services

A. There shall be a written agreement with a consulting pharmacist to direct, supervise and be responsible for pharmacy services in the facility in accordance with accepted professional principles and appropriate State, Federal, and local laws and regulations. (II)

B. At least monthly the pharmacist shall: (II)

1. Review the medication profile for each resident for potential adverse reactions, allergies, interactions and laboratory test modifications. The attending physician shall be advised of recommended changes in the medication regimen, medication therapy duplication, incompatibilities or contraindications;

2. Review medication storage areas and emergency medication kits;

3. Review all medications in the facility for expiration dates and assure the removal of discontinued or expired medications from use as indicated;

4. Verify proper storage of medications and biologicals in the facility and make recommendations concerning the handling, storing and labeling of medications;

5. Examine the controlled substances records and affirm to the administrator that this inventory is correct;

6. Assess the facility pharmaceutical services to assure the services have been properly implemented and maintained and submit to the administrator a written report of each pharmaceutical assessment including recommendations.

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C. In addition to the services enumerated in Section 1304.B, the pharmacist shall participate in the formulation of pharmacy service policies and procedures and coordinate pharmacy services. (II)

D. Facilities that maintain stocks of legend medications and biologicals for resident use within the facility shall obtain and maintain from the South Carolina Board of Pharmacy a valid, current, nondispensing drug outlet permit, displayed in a conspicuous location in the facility.

1305. Medication Containers (II)

A. The labeling of medications and biologicals shall be based on currently accepted professional principles. Labels shall identify, at a minimum, the name of the medication or biological, strength and lot number. As appropriate, labels shall include resident name and any identifying number. The prescribing physician's name and directions for use shall be on the label if it is not documented in another effective manner. (I)

B. Medication containers that have been damaged, compromised, or without labels, or that have damaged, incomplete or makeshift labels are considered to be misbranded and are prohibited and shall be destroyed in accordance with Section 1309.

C. Medications for each resident shall be maintained in the original container(s) including unit dose systems. Opening blister packs to remove medications for destruction or adding new medications for administration, except under the direction of a pharmacist, is prohibited. (I)

D. When a physician or other legally authorized healthcare provider changes the dosage of a medication, such information shall be documented in the medication administration record and a label that does not obscure the original label shall be attached to the container that states, "Directions changed; refer to MAR and physician or other legally authorized healthcare provider orders for current administration instructions." The new directions shall be communicated to the pharmacist upon receipt of the order. (I)

1306. Medication Storage

A. Medications shall be stored and safeguarded in a locked medicine preparation room (See Section 2808) or locked cabinet at or near the staff work area to prevent access by unauthorized individuals. If medication carts are utilized for storage, they shall be locked when not in use. Expired or discontinued medications shall not be stored with current medications. Storage areas shall not be located near sources of heat, humidity, or other hazards that may negatively impact medication effectiveness or shelf life. (I)

B. Medications requiring refrigeration or freezing shall be stored in a refrigerator or freezer as appropriate at the temperature range established by the manufacturer used exclusively for that purpose in the medicine preparation room, or in a locked refrigerator used exclusively for medications, or in a separate locked box within a multi-use refrigerator at or near the staff work area. Food and drinks shall not be stored in the same refrigerator or freezer in which medications and biologicals are stored. Blood and blood products may be stored in the same refrigerator with medications and biologicals if stored in a separate compartment from the medications and biologicals in accordance with the AABB. Refrigerators and freezers shall be provided with a thermometer accurate to plus or minus three (3) degrees Fahrenheit. (I)

C. Medications shall be stored: (I)

1. Under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, safety and security;

2. In accordance with manufacturer's directions and in accordance with all applicable State, Federal, and local laws and regulations;

3. Separately from poisonous substances, such as cleaning and germicidal agents, or body fluids;
 4. In a manner that provides for separation between topical and oral medications, and which provides for separation of each resident's medication;
 5. In medicine preparation rooms or cabinets that are well-lighted and of sufficient size to permit orderly storage and preparation of medications. Keys to the medicine preparation room, cabinet, refrigerator or medication cart at the staff work area shall be under the control of a designated licensed nurse.
- D. Nonlegend medications that can be obtained without a prescription such as aspirin, milk of magnesia and mineral oil, may be retained and labeled as stock in the facility for administration as ordered by a physician or other legally authorized healthcare provider.
- E. The medications prescribed for a resident shall be protected from use by any other individuals. For those residents who have been authorized by a physician or other legally authorized healthcare provider to self-administer medications, such medications shall be stored in accordance with facility policies and procedures. (I)
- F. Prescribed and over-the-counter medications may be maintained at bedside upon physician orders if kept in an individual cabinet or compartment that is locked, such as the drawer of the resident's night stand, in the room of each resident who has been authorized in writing to self-administer by a physician or other legally authorized healthcare provider, in accordance with facility policies and procedures. (II)
- G. Medications listed in Schedule II of the Federal "Controlled Substance Act" shall be stored in separately locked, permanently affixed, compartments within a locked medicine preparation room, cabinet or a medication cart, unless otherwise authorized by a change in the State-Federal Law pertaining to the unit dose distribution system. (I)

1307. Medication Control and Accountability (II)

- A. Records of receipt, administration and disposition of all medications shall be maintained in sufficient detail to enable an accurate reconciliation.
- B. Medication, supplies and devices shall not be administered and/or provided to residents beyond the expiration date of those items. (I)
- C. Medications that have been discontinued may be secured in the staff work area with a written order by the attending physician. Such medications shall not be held beyond a ninety-day (90-day) period unless so ordered by the physician or other legally authorized healthcare provider, but in no case held beyond the expiration date of the medication.
- D. Separate control sheets shall be maintained on any controlled substances listed in Schedule II, State and Federal "Controlled Substance Act." This record shall contain the following information: date, time administered, name of resident, dose, signature of individual administering, name of physician or other legally authorized healthcare provider ordering the medication and Schedule II controlled substances balances (See Section 1303.G).

1308. Emergency Medications (II)

- A. Each facility shall maintain, upon the advice and written approval of the Medical Director and consultant pharmacist, an emergency medication kit or cart of designated medicines and equipment at each staff work area for the use of physicians or other legally authorized healthcare providers in treating the emergency needs of residents. As an exception, the facility may determine that one (1) emergency medication

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kit can be readily accessible to, and adequately meet the needs of two (2) or more staff work areas. If such is the case, the facility's written policies shall include the location(s) of the emergency medication kit(s) and the justification for this determination. There shall not be less than one (1) emergency medication kit on each resident floor.

B. The emergency medication kit or cart shall be sealed and stored in a secured area to prevent unauthorized access and to assure a proper environment for preservation of the medications within, but in such a manner as to allow immediate access.

C. An inventory of medications maintained in the kit shall be attached to or placed in the kit. Another inventory list shall be maintained at the staff work area for quick reference.

D. Whenever the emergency medication kit or cart is opened, the use of contents shall be documented by the nursing staff and it shall be restocked and resealed by the pharmacist within two (2) business days.

1309. Disposition of Medications

A. Upon discharge of a resident, unused medications, biologicals, medical supplies and solutions may be released to the resident, family member, or responsible party, unless prohibited by facility policies and procedures, the attending physician or other legally authorized healthcare provider.

B. When resident medications, biologicals, medical supplies or solutions have deteriorated or exceeded their expiration date or there are partial unused medications, or medication containers are misbranded, they shall be destroyed by a licensed nurse or other legally authorized healthcare provider or returned to the pharmacy. (II)

C. When noncontrolled legend drugs, biologicals, medical supplies and solutions are destroyed, the following shall be documented: date of destruction, medication name, strength, quantity, mode of destruction, and the name of the individual performing the destruction and witnessed by a licensed nurse or pharmacist. (I)

D. The destruction of controlled substances shall be accomplished pursuant to the requirements of R.61-4. (I)

SECTION 1400 - MEAL SERVICE

1401. General (II)

A. Facility meal service programs shall be inspected and approved by the Division of Health Licensing, and shall be regulated, inspected, and graded pursuant to R.61-25.

B. When meals are catered to a facility, such meals shall be obtained from a meal service establishment graded by the Department, pursuant to R.61-25. (I)

C. If food is prepared at a central kitchen and delivered to separate facilities or separate buildings and/or floors of the same facility, provisions shall be made for proper maintenance of food temperatures and a sanitary mode of transportation that are approved by the Division of Health Licensing.

D. Food shall be prepared by methods that conserve the nutritive value, flavor and appearance. The food shall be palatable, properly prepared, and sufficient in quantity and quality to meet the daily nutritional needs of the residents in accordance with written dietary policies and procedures.

E. Efforts shall be made to accommodate the religious, cultural, and ethnic preferences of each resident and consider variations of eating habits, unless the orders of a physician or other legally authorized healthcare

provider contraindicate.

F. Nourishment stations, if provided, shall contain a handwashing sink equipped for handwashing, equipment for serving nourishment between scheduled meals, refrigerator, and storage cabinets.

G. At least one (1) dietary refrigerator shall be provided on each resident floor and shall have a thermometer accurate to plus or minus three (3) degrees Fahrenheit. In addition, if a refrigerator(s) is in a resident room for food storage, the same thermometer requirement applies.

H. Medications, nursing supplies, or biologicals shall not be stored in the dietary department or any refrigerator or storage area utilized by the dietary department.

I. The preparation of meals shall only be conducted in areas of the facility that have been approved by the Department. Extended operations of a facilities meal service program shall not be located in rooms used for other purposes, *e.g.*, sleeping, living, laundry.

1402. Food and Food Storage (II)

A. The storage, preparation, serving, transportation of food, and the sources from which food is obtained shall be in accordance with R.61-25.

B. Home canned food shall be prohibited.

C. At least a three-day supply of staple foods and a two-day supply of perishable foods shall be maintained on the premises. Supplies shall be appropriate to meet the requirements of the menu and special or therapeutic diets.

D. Food stored in refrigerators and freezers shall be covered, labeled, and dated. Prepared food shall not be stored in the refrigerator for more than three (3) days.

E. All food in the facility shall be from food sources approved or considered satisfactory by the Department, and shall be clean, wholesome, free from spoilage, free from adulteration and misbranding, and safe for human consumption. (I)

F. Poisonous products that are used in the daily operation of the facility such as pressurized insecticides, lye, drain cleaners, ammonia, and other similar materials that are stored in food preparation areas, equipment-washing and utensil-washing areas, clean utensil storage areas, or food storage areas shall be inaccessible to residents and stored in closed cabinets or in approved designated areas. These products may be stored with detergents, sanitizers, and other cleaning compounds.

G. Hot and cold running water, under pressure, shall be provided in all areas where food is prepared, or equipment, utensils, and containers are washed.

1403. Food Equipment and Utensils

A. The storage, cleaning and sanitizing of equipment and utensils utilized shall be in accordance with R.61-25. (II)

B. There shall be written procedures for cleaning, disinfecting and sanitizing all equipment and meal service work areas.

C. All walk-in refrigerators and freezers shall be equipped with opening devices that will permit opening of the door from the inside at all times. (I)

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D. Single-service articles shall be used whenever the facility is unable to clean and sanitize utensils adequately and effectively. (II)

E. Drinking containers made of porous materials shall not be used unless the containers have smooth liners which can be easily cleaned. These containers and/or liners shall be sanitized at least weekly or more often as necessary and identified for individual resident use. Disposable containers shall be replaced at least weekly. (II)

1404. Meals and Services (II)

A. All facilities shall provide meal services to meet the daily nutritional needs of the residents in accordance with the dietary reference intakes (DRIs) of the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences.

B. The dining area shall provide a comfortable and relaxed environment. Table service shall be planned in an attractive and colorful manner for each meal.

C. A minimum of three (3) nutritionally-adequate meals in each twenty-four-hour (24-hour) period shall be provided for each resident unless otherwise directed by the resident's physician or other legally authorized healthcare provider. Residents shall be allowed to choose between a variety of foods offered. Personal preferences as to the times residents receive their meals may be honored. This may include offering smaller, more frequent meals, or snacks, or postponing meals to honor a resident's request, *e.g.*, to sleep or not to eat. The condition of the resident shall dictate the manner in which meal service is adjusted to suit personal preferences. Meal service systems, *e.g.*, four-meal plans and/or buffet dining, may be offered in order to facilitate the resident receiving a variety of foods.

D. Not more than fourteen (14) hours shall elapse between the scheduled serving of the evening meal and breakfast the following day. As an exception, there may be up to sixteen (16) hours between the scheduled serving of the evening meal and breakfast the following day if approved by the resident's attending physician and the resident, and if a nourishing snack is provided after the evening meal.

E. Food shall be cut, chopped, ground or blended to meet individual needs.

F. Special attention shall be given to preparation and prompt serving in order to maintain correct food temperatures, in accordance with R.61-25, for serving at the table or resident room (tray service).

G. The same menu items shall not be repetitively served during each seven-day period except to honor specific, individual resident requests. Substitutes of similar nutritive value shall be offered to residents who refuse food served.

H. Food and snacks shall be available and offered between meals at no additional cost to the residents. Individual resident food and snack preferences shall be honored when reasonable.

1405. Meal Service Staff

A. The health and cleanliness of all those engaged in food preparation and serving shall be in accordance with R.61-25. (II)

B. The meal service operations shall be under the direction of a dietitian or qualified food service supervisor who shall be responsible for supervising the meal service staff, planning, preparation and serving of food and the maintenance of proper records. A staff member shall be designated, by name or position, to act in the absence of this person. (II)

C. A qualified food service supervisor shall be a person who: (II)

1. Is a graduate of a dietetic technician training program approved by the American Dietetic Association; or

2. Is a graduate of a course of study meeting the requirements of the American Dietetic Association and approved by the state; or

3. Has at least three (3) years of training and experience in meal service supervision and management in a military service equivalent in content to the programs described in Sections 1405.C.1 and C.2.

D. A qualified food service supervisor shall receive consultation from a dietitian who is available on a full-time, part-time or consultant basis. (II)

E. There shall be a dietitian available to provide dietary review, menu planning, and consultation. If a dietitian is not a staff member of the facility, there shall be a valid contract for services between the facility and the dietitian. (II)

F. All meal service staff shall wear clean clothes, maintain personal cleanliness, and conform to hygienic practices while on duty. Shoes worn by meal service staff shall be closed-toed. Only authorized persons shall be allowed in the kitchen. (II)

G. Sufficient staff members shall be available to serve food and to provide individual attention and assistance, as needed. (II)

H. Individuals engaged in the preparation and service of food shall wear clean hair restraints, *e.g.*, hair nets, hair wraps, hats, that will properly restrain all hair of the face and head and prevent contamination of food and food contact surfaces. (II)

I. There shall be trained staff members to supervise the preparation and serving of the proper diet to the residents including having sufficient knowledge of food values in order to make appropriate substitutions when necessary. (II)

J. Residents shall not be permitted to engage in food preparation unless the following criteria are met: (II)

1. The ICP of the resident has indicated food preparation as suitable and/or beneficial to the resident;

2. The resident is directly supervised by staff members, *i.e.*, shall be in the food preparation area with the resident.

K. Meal service staff shall have the responsibility of accompanying the food to the floor, when necessary.

1406. Diets (II)

A. All diets shall be prescribed, dated and signed by the physician and be prepared in conformance with physicians' orders giving consideration to individual resident preferences.

B. The necessary equipment for preparation of resident diets shall be available and utilized.

C. A diet manual published within the previous five (5) years shall be available and shall address at a minimum:

1. Food sources and food quality;

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2. Food protection storage, preparation and service;
3. Meal service staff health and cleanliness;
4. Dietary Reference Intakes (DRIs) of the Food and Nutrition Board of the Institute of Medicine, National Academy of Sciences food serving recommendations;
5. Menu planning, including plans appropriate to special needs, *e.g.*, diabetic, low-salt, low-cholesterol, or other diets appropriate for the elderly and/or infirm.

1407. Menus

A. Menus shall be planned and written at a minimum of four (4) weeks in advance and dated as served. The current week's menu, including routine and special diets and any substitutions or changes made, shall be readily available. At least the current days menu shall be posted in one (1) or more conspicuous places in a public area. All substitutions made on the master menu shall be recorded in writing. Cycled menus shall be rotated so that the same weekly menu is not duplicated for at least a period of two (2) weeks.

B. Each menu shall be approved in writing by a dietitian before meals are prepared and served.

C. A file of tested recipes, adjusted to appropriate yield, shall correspond to items on the posted menus.

1408. Ice and Drinking Water (II)

A. Ice from a water system in accordance with R.61-58, shall be available and precautions taken to prevent contamination. The ice scoop shall be stored in a sanitary manner outside the ice container and allowed to air dry. The ice scoop and holding tray shall be sanitized daily.

B. Potable drinking water shall be available and accessible to residents at all times.

C. The use of common cups shall be prohibited.

D. Ice delivered to resident areas in bulk shall be in nonporous, covered containers that shall be cleaned after each use.

E. Drinking fountains of a sanitary angle jet design shall be properly regulated and maintained. There shall be no possibility of the mouth or nose becoming submerged. If drinking fountains are not provided, single service cups shall be used.

1409. Equipment

Maintenance and cleaning tools such as brooms, mops, vacuum cleaners, and similar equipment shall be maintained and stored in a way that does not contaminate food, equipment, utensils or linens and shall be stored in an orderly manner within a separate space or closet.

1410. Refuse Storage and Disposal (II)

Refuse storage and disposal shall be in accordance with R.61-25.

SECTION 1500 - EMERGENCY PROCEDURES/DISASTER PREPAREDNESS**1501. Emergency Care (II)**

The facility shall provide for the care of residents in an emergency and make available appropriate equipment and services to render emergency resuscitative and life-support procedures.

1502. Disaster Preparedness (II)

A. All facilities shall develop, by contact and consultation with their county emergency preparedness agency, a suitable written plan for actions to be taken in the event of a disaster and/or emergency evacuation. In the event of mass casualties, the facility shall provide resources as available. The plan shall be updated, as appropriate, annually, or as needed, and rehearsed at least annually. A record of the rehearsal, including its date and time, a summary of actions and recommendations, and the names of participants shall be maintained.

B. The disaster/emergency evacuation plan shall include, but not be limited to:

1. A sheltering plan to include:

a. Facility occupancy at the time of the disaster;

b. Name, address and phone number of the sheltering facility(ies) to which the residents will be relocated during a disaster;

c. A letter of agreement signed by an authorized representative of each sheltering facility which shall include: the number of relocated residents that can be accommodated; sleeping, feeding, and medication plans for the relocated residents; and provisions for accommodating relocated staff members and volunteers. The letter shall be updated with the sheltering facility at least every three (3) years and whenever significant changes occur. For those facilities located in Beaufort, Charleston, Colleton, Horry, Jasper, and Georgetown counties, at least one (1) sheltering facility shall be located in a county other than these counties.

2. A transportation plan, to include agreements with entities for relocating residents, which addresses:

a. The relocation needs of the residents and staff contingent upon the type of disaster/emergency confronted;

b. Procedures for providing appropriate medical support, food, water and medications during relocation based on the needs and number of the residents;

c. Estimated time to accomplish the relocation during normal conditions;

d. Primary and secondary routes to be taken to the sheltering facility.

3. A staffing plan for the relocated residents, to include:

a. How care will be provided to the relocated residents, including licensed and nonlicensed staff members that will meet the staffing requirements of Section 606 for residents who are relocated;

b. Prearranged transportation arrangements to ensure staff members are relocated to the sheltering facility;

c. Co-signed statement by an authorized representative of the sheltering facility if staffing, bedding, or medical supplies are to be provided by the sheltering facility.

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C. In instances where there are proposed changes in licensed bed capacity, the disaster/emergency evacuation plan shall be updated to reflect the new licensed bed capacity and submitted to the Division of Health Licensing along with the application for bed capacity change.

D. Only those nursing homes located in the coastal counties of Beaufort, Charleston, Colleton, Horry, Jasper, or Georgetown may request exemption from an emergency evacuation order.

1. Facilities in the above counties may elect to seek an exemption from having to evacuate the facility in the event the Governor issues a Mandatory Evacuation Order for an impending hurricane. Facilities located in Beaufort, Charleston, Colleton, Horry, Jasper, or Georgetown counties may request an exemption from an emergency evacuation order if the facility has previously submitted the following to the Department:

a. A Critical Data Sheet, updated annually, that certifies emergency power supply is available for a minimum of seventy-two (72) hours, a seventy-two (72) hour supply of food, water, and medical supplies is on site, and that adequate staff will be available and on duty to provide continual care for the residents;

b. A copy of the engineer's report concerning the wind load the facility should withstand; and

c. A current approved evacuation plan prior to a declared emergency.

2. Once the prerequisites are met and an emergency has been declared, the facility shall draw down the census of the facility and then contact the Division of Health Licensing to request an exemption from the evacuation order.

3. A facility shall comply with the mandatory evacuation order unless an exemption from evacuation of the facility for a specific storm has been received from the Department.

1503. Licensed Bed Capacity During An Emergency (II)

A. A facility desiring to temporarily admit residents in excess of its licensed bed capacity due to an emergency shall:

1. Request that the Department concur that an emergency situation does exist by contacting the Division of Health Licensing;

2. Determine the maximum number of residents to be temporarily admitted;

3. Establish an anticipated date for discharge of the temporary residents;

4. Outline how and where the temporary residents will be housed; and

5. Contact the county emergency preparedness agency to advise of additional residents.

B. Other issues such as who will staff the care of the temporary residents, physician orders, additional food for the temporary residents, and handling of medications shall be resolved ahead of time by memoranda of agreement, internal policies and procedures, *etc.*

C. The facility shall notify the Division of Health Licensing in writing when the temporary residents have been discharged.

1504. Emergency Call Numbers (II)

Although the facility may be in a location that has access to “911” services, emergency call data shall be immediately available, posted in a conspicuous place, at least at every staff work area, and shall include, at a minimum, the telephone numbers of fire and police departments, ambulance service, and the Poison Control Center. Other emergency call information shall be available, to include the names, addresses, and telephone numbers of physicians and staff members to be notified in case of emergency.

1505. Continuity of Essential Services (II)

There shall be a written plan to be implemented to assure the continuation of essential resident support services for such reasons as power outage, water shortage, or in the event of the absence from work of any portion of the workforce resulting from inclement weather or other causes.

1506. Use of the Facility or Services in Response to a Public Health Emergency (II)

The Department, in coordination with the guidelines of the State Emergency Operations Plan, may, for such period as the state of public health emergency exists and as may be reasonable and necessary for emergency response, require a nursing home to provide services or the use of its facility if the services are reasonable and necessary to respond to the public health emergency as a condition of licensure, authorization, or the ability to continue doing business as a nursing home. When the Department needs the use or services of the facility to isolate or quarantine individuals during a public health emergency, the management and supervision of the nursing home shall be coordinated with the Department to assure protection of existing residents and compliance with the regulation in accordance with S.C. Code Ann. Section 44-4-310 (1976, as amended).

SECTION 1600 - FIRE PREVENTION**1601. Arrangements for Fire Department Response/Protection (II)**

A. Each facility shall develop, in coordination with its supporting fire department and/or disaster preparedness agency, suitable written plans for actions to be taken in the event of fire, *i.e.*, fire plan and evacuation plan. (I)

B. Facilities located outside a service area or range of a public fire department shall arrange for the nearest fire department to respond in case of fire by written agreement with that fire department. A copy of the agreement shall be maintained on file in the facility and a copy shall be forwarded to the Division of Health Licensing. If the agreement is changed, a copy shall be forwarded to the Division of Health Licensing. (I)

C. Fire protection for all facilities shall meet all of the requirements of the South Carolina State Fire Marshal’s Office.

1602. Tests (II)

Fire protection and suppression systems shall be maintained and tested at least annually in accordance with NFPA 10, 13, 14, 15, 25, 70, 72, and 96.

1603. Fire Response Training (I)

A. Each staff member shall receive training within seven (7) days of his or her first day on the job in the facility and at least annually thereafter, addressing at a minimum, the following:

1. Fire plan;

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2. Reporting a fire;
3. Use of the fire alarm system;
4. Location and use of fire-fighting equipment;
5. Methods of fire containment;
6. Specific responsibilities, tasks, or duties of each individual when a facility fire occurs.

B. A plan for the evacuation of residents, staff members, and visitors, to include procedures and evacuation routes out of the facility, in case of fire or other emergencies, shall be established and posted in conspicuous public areas throughout the facility.

1604. Fire Drills (I)

A. An unannounced fire drill shall be conducted at least quarterly for all shifts. Records of drills shall be maintained at the facility, indicating the date, time, shift, description, an evaluation of the drill, and the names of staff members directly involved in responding to the drill. Should fire drill requirements be mandated by statute or regulation, then compliance with that statute or regulation shall supersede the provisions of this section.

B. Drills shall be designed and conducted in consideration of and reflecting the content of the fire response training described in Section 1603.

SECTION 1700 - MAINTENANCE

1701. General (II)

A. The structure, including its component parts and equipment, shall be properly maintained and free of damage to perform the functions for which it is designed. There shall be written procedures and methods for communicating repair and/or replacement needs to responsible facility staff.

B. Noise, dust, and other related resident intrusions shall be minimized when construction and/or renovation activities are underway.

1702. Equipment (II)

A. Equipment used in the provision of care, treatment, procedures, and/or services shall meet appropriate specifications and shall be operated and maintained in accordance with the manufacturer's guidelines and with State, Federal, and local laws.

B. Preventive maintenance and repair, when necessary, shall be performed and documented for all life support equipment, to include, but not be limited to: (I)

1. Clinical monitoring and diagnostic equipment;
2. Resuscitation equipment;
3. Medical gas systems.

C. Life support equipment shall be calibrated, if applicable, and/or tested at periodic intervals, but not less than annually, to assure proper operation. After repairs and/or alterations are made to any equipment or system, thorough testing for proper operation shall be accomplished prior to returning it to service. (I)

SECTION 1800 - INFECTION CONTROL AND ENVIRONMENT

1801. Staff Practices (II)

A. Staff practices shall promote conditions that prevent the spread of infectious, contagious, or communicable diseases and provide for the proper disposal of toxic and hazardous substances. These preventive measures and practices shall be in compliance with applicable regulations and guidelines of the Occupational Safety and Health Administration, *e.g.*, the Bloodborne Pathogens Standard; the Centers for Disease Control and Prevention, *e.g.*, Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices and the Hospital Infection Control Practices Advisory Committee; the Department's South Carolina Guidelines For Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105; and other applicable State, Federal and local laws and regulations.

B. There shall be an infection control/QI committee that meets at least annually to address infection control issues consisting of the medical director and representatives from at least administration, nursing, dietary, and housekeeping staff to assure compliance with this regulation regarding infection control.

C. There shall be a tuberculosis infection control program per CDC guidelines. A facility licensed nurse shall be designated at each facility to coordinate the tuberculosis infection control program.

1802. Tuberculosis Risk Assessment (I)

A. All facilities shall conduct an annual tuberculosis risk assessment (See Section 101.BBBB) in accordance with CDC guidelines (See Section 102.B.12) to determine the appropriateness and frequency of tuberculosis screening and other tuberculosis related measures to be taken.

B. The risk classification, *i.e.*, low risk, medium risk, shall be used as part of the risk assessment to determine the need for an ongoing TB screening program for staff and residents and the frequency of screening. A risk classification shall be determined for the entire facility. In certain settings, *e.g.*, healthcare organizations that encompass multiple sites or types of services, specific areas defined by geography, functional units, patient population, job type, or location within the setting may have separate risk classifications.

1803. Staff Tuberculosis Screening (I)

A. Tuberculosis Status. Prior to date of hire or initial resident contact, the tuberculosis status of direct care staff shall be determined in the following manner in accordance with the applicable risk classification:

B. Low Risk:

1. Baseline two-step Tuberculin Skin Test (TST) or a single Blood Assay for *Mycobacterium tuberculosis* (BAMT): All staff (within three (3) months prior to contact with residents) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline.

2. Periodic TST or BAMT is not required.

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3. Post-exposure TST or a BAMT for staff upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8-10) weeks after that exposure to *M. tuberculosis* ended.

C. Medium Risk:

1. Baseline two-step TST or a single BAMT: All staff (within three (3) months prior to contact with residents) unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly employed staff has had a documented negative TST or a BAMT result within the previous twelve (12) months, a single TST (or the single BAMT) can be administered to serve as the baseline.

2. Periodic testing (with TST or BAMT): Annually, of all staff who have risk of TB exposure and who have previous documented negative results. Instead of participating in periodic testing, staff with documented TB infection (positive TST or BAMT) shall receive a symptom screen annually. This screen shall be accomplished by educating the staff about symptoms of TB disease (including the staff and/or direct care volunteers responses), documenting the questioning of the staff about the presence of symptoms of TB disease, and instructing the staff to report any such symptoms immediately to the administrator or director of nursing. Treatment for latent TB infection (LTBI) shall be considered in accordance with CDC and Department guidelines and, if recommended, treatment completion shall be encouraged.

3. Post-exposure TST or a BAMT for staff upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all staff who have had unprotected exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8-10) weeks after that exposure to *M. tuberculosis* ended.

D. Baseline Positive or Newly Positive Test Result:

1. Staff with a baseline positive or newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or documentation of treatment for latent TB infection (LTBI) or TB disease or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). These staff members will be evaluated for the need for treatment of TB disease or latent TB infection (LTBI) and will be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

2. Staff who are known or suspected to have TB disease shall be excluded from work, required to undergo evaluation by a physician, and permitted to return to work only with approval by the Department TB Control program. Repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician.

1804. Resident Tuberculosis Screening (I)

A. Tuberculosis Status. Prior to admission, the tuberculosis status of a resident shall be determined in the following manner in accordance with the applicable risk classification:

B. For Low Risk and Medium Risk:

1. Admission/Baseline two-step TST or a single BAMT: All residents within one (1) month prior to admission unless there is a documented TST or a BAMT result during the previous twelve (12) months. If a newly-admitted resident has had a documented negative TST or a BAMT result within the previous twelve

(12) months, a single TST (or the single BAMT) can be administered within one (1) month prior to admission to the facility to serve as the baseline. In the institutional nursing home setting, residents admitted from other parts of that institutional campus who have had TB screening done which meets the requirements outlined in this section and which was done within the last six (6) months will not be required to undergo additional initial screening.

2. Periodic TST or BAMT is not required.

3. Post-exposure TST or a BAMT for residents upon unprotected exposure to *M. tuberculosis*: Perform a contact investigation when unprotected exposure is identified. Administer one (1) TST or a BAMT as soon as possible to all residents who have had exposure to an infectious TB case/suspect. If the TST or the BAMT result is negative, administer another TST or a BAMT eight to ten (8-10) weeks after that exposure to *M. tuberculosis* ended.

C. Baseline Positive or Newly Positive Test Result:

1. Residents with a baseline positive or newly positive test result for *M. tuberculosis* infection (*i.e.*, TST or BAMT) or documentation of treatment for latent TB infection (LTBI) or TB disease or signs or symptoms of tuberculosis, *e.g.*, cough, weight loss, night sweats, fever, shall have a chest radiograph performed immediately to exclude TB disease (or evaluate an interpretable copy taken within the previous three (3) months). Routine repeat chest radiographs are not required unless symptoms or signs of TB disease develop or unless recommended by a physician. These residents will be evaluated for the need for treatment of TB disease or latent TB infection (LTBI) and will be encouraged to follow the recommendations made by a physician with TB expertise (*i.e.*, the Department's TB Control program).

2. Residents who are known or suspected to have TB disease shall be transferred from the facility if the facility does not have an Airborne Infection Isolation room (See Section 101.G), required to undergo evaluation by a physician, and permitted to return to the facility only with approval by the Department's TB Control program.

1805. Isolation Procedures (II)

A. An infection isolation room (See Section 2804) shall be made available if ordered by the attending physician for a resident who has a communicable disease that poses a threat to the health or safety of other residents or who for some other reason requires isolation and only to the extent that is required to protect the resident and others.

B. Should it be determined that the facility is unable to care for the resident to the degree which assures the health and safety of the resident and the other residents of the facility, the resident shall be relocated to a facility that can meet his or her needs.

C. The facility may accept residents with contagious pulmonary tuberculosis and provide appropriate treatment, provided that CDC guidelines are met.

1. Residents with contagious pulmonary tuberculosis shall be separated, *e.g.*, Airborne Infection Isolation room, transfer, from all other residents until declared noncontagious by a Department TB physician.

2. When residents with contagious pulmonary tuberculosis are to remain in the facility for treatment instead of being transferred to another facility, isolation procedures shall follow CDC guidelines, including Airborne Infection Isolation requirements.

3. Airborne Infection Isolation rooms may be required to have negative pressure as determined by the facility's tuberculosis risk assessment (See Section 101.BBBB) in the manner designated by guidelines

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established by the Department.

D. When isolation precautions are implemented, signs directing individuals to the staff work area for further information shall be posted at the entrance to the resident room.

1806. Vaccinations (II)

A. Hepatitis B.

1. All direct care staff who perform tasks involving contact with blood, blood-contaminated body fluids, other body fluids, or sharps shall have the hepatitis B vaccination series unless the vaccine is medically contraindicated or an individual is offered the series and declined. In either case, the decision shall be documented.

2. Each staff member with eligibility as identified in Section 1806.A.1 who elects vaccination shall start the initial dose of the three-dose series within ten (10) days of the date hired and complete the series within four (4) months.

B. Influenza.

1. Direct care staff and residents shall have an annual influenza vaccination unless the vaccine is medically contraindicated or the person is offered the vaccination and declined. In either case, the decision shall be documented.

2. Persons receiving influenza vaccination shall, as appropriate, receive influenza vaccination each influenza season from October through March. Consideration may be made for availability issues, *e.g.*, vaccine shortages.

C. Pneumococcal. Upon admission, residents shall be immunized for *Streptococcus pneumoniae*. Residents shall be vaccinated for *Streptococcus pneumoniae* unless the vaccine is medically contraindicated or the resident is offered the vaccination and declined. In either case, the decision shall be documented.

1807. Housekeeping (II)

A. The facility and its grounds shall be neat, uncluttered, clean, and free of vermin and offensive odors. There shall be sufficient cleaning supplies and equipment available. Housekeeping shall at a minimum include:

1. Cleaning each specific area, including storage areas, of the facility. Accumulated waste material shall be removed daily or more often if necessary;

2. Cleaning and disinfection, as needed, of equipment used and/or maintained in each area. Cleaning and disinfection shall be appropriate to the area and the equipment's purpose or use and shall include resident room preparation for new occupants;

3. Disposable materials and equipment shall be used by one (1) resident only, in accordance with manufacturer's recommendations and then disposed of in an acceptable manner;

4. Storage of chemicals indicated as harmful on the product label, cleaning materials, and supplies in cabinets or well-lighted closets and rooms, inaccessible to residents;

5. Cleaning of all exterior areas, *e.g.*, porches and ramps, and removal of safety impediments such as snow, ice and standing water;

6. Keeping facility grounds free of weeds, rubbish, overgrown landscaping, and other potential breeding sources for vermin.

B. All air filters shall be maintained free of excess dust and combustible material. Filters shall be replaced or cleaned when the resistance has reached a value of recommended replacement by the manufacturer.

C. Dry dusting and dry sweeping are prohibited.

1808. Infectious Waste (II)

Accumulated waste, including all contaminated sharps, dressings, and/or similar infectious waste, shall be disposed of in a manner compliant with the Department's S.C. Guidelines for Prevention and Control of Antibiotic Resistant Organisms in Health Care Settings, and R.61-105.

1809. Pets (II)

A. Healthy domestic pets that are free of fleas, ticks, and intestinal parasites, and have been screened by a veterinarian within the past twelve (12) months prior to entering the facility, have received required inoculations, if applicable, and that present no apparent threat to the health and safety of the residents, may be permitted in the facility.

B. Pets shall be permitted in resident dining areas only during times when food is not being served and shall not be allowed in the kitchen. If the dining area is adjacent to a food preparation or storage area, those areas shall be effectively separated by walls and closed doors while pets are present.

1810. Clean and Soiled Linen and Clothing (II)

A. Clean Linen and Clothing.

1. Proper storage facilities shall be provided for keeping clean linen, restraints and resident clothes in sanitary condition prior to use. Clean linen not stored separately shall be covered. Clean linen and clothing storage rooms shall be used only for the storage of clean linen and clothing. Clean linen and clothing shall be separated from storage of other materials.

2. A supply of clean, sanitary linen and clothing shall be available at all times.

3. Clean linen and clothing shall be stored and transported in a sanitary manner, *e.g.*, covered.

B. Soiled Linen and Clothing.

1. A soiled linen storage room shall be provided.

2. Soiled linen and clothing shall neither be sorted, rinsed, nor washed outside the laundry service area.

3. Provisions shall be made for collecting and transporting soiled linen and clothing.

4. Soiled linen and clothing shall be kept in enclosed or covered nonabsorbent containers or washable laundry bags.

5. Soiled linen and clothing shall not be transported through resident rooms, kitchens, food preparation or storage areas.

6. If linen chutes are used, the soiled linen and clothing shall be enclosed in bags before placing in

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chute.

7. Facilities shall utilize Standard Precautions in the handling of all soiled linen and clothing. Labeling or color-coding of bagged soiled linen and clothing is sufficient provided all on-site or off-site handlers recognize the containers as requiring compliance with Standard Precautions.

1811. Laundry (II)

A. Facility-based laundry services shall be conducted in a clean, safe, and well-ventilated area, divided into specific clean and soiled processing areas and properly insulated to prevent transmission of noise, heat, steam, and odors to resident care areas. The facility shall assure that nonfacility-based laundry services to the nursing home exercise every precaution to render all linen safe for reuse.

B. Laundry services shall not be conducted in resident rooms, dining rooms, or in locations where food is prepared, served, or stored. As an element of the resident's ICP, folding of clean personal laundry by residents is permitted in resident rooms.

C. Clean and soiled processing areas shall either be in separate rooms or be provided with ventilation to prevent cross-contamination.

SECTION 1900 - QUALITY IMPROVEMENT PROGRAM

1901. General (II)

There shall be a written, implemented quality improvement program that provides effective self-assessment and implementation of changes designed to improve the care, treatment and services provided by the facility.

SECTION 2000 - DESIGN AND CONSTRUCTION

2001. General (II)

A. A facility shall be planned, designed, and equipped to provide and promote the health and safety of each resident. Facility design shall be such that all residents have access to required services and shall provide a pleasant and comfortable atmosphere.

B. Facilities shall meet the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

2002. Local and State Codes and Standards (II)

A. Buildings shall comply with applicable local and state laws, codes, ordinances, and standards with reference to design and construction. No facility shall be licensed unless the Department has assurance that local zoning and building authorities have approved the facility for code compliance.

B. The Department utilizes the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

2003. Construction/Systems (II)

A. All buildings of facilities, new and existing, being licensed for the first time, or changing the license to provide a different service, shall meet the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent (See Section 201.B).

B. Unless specifically required otherwise in writing by the Department's Division of Health Facilities Construction (DHFC), all existing facilities shall meet the construction codes and regulations for the building and its essential equipment and systems in effect at the time the accepted construction documents were professionally stamped and issued. Except for proposed facilities that have received a current and valid written acceptance document by the Department's Division of Health Facilities Construction (DHFC) to begin construction, current construction codes, regulations, and requirements shall apply to those facilities licensed after the effective date of these regulations.

C. Any additions or renovations to an existing facility, other than cosmetic, *e.g.* painting, wallpapering or carpeting, shall meet the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent, for the building and its essential equipment and systems in effect at the time of the addition or renovation. When the cost of additions or renovations to the building exceeds fifty percent (50%) of the current market value of the existing facility and its essential equipment and systems, the building shall meet the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent. An addition separated by a four-hour firewall shall be considered as a separate building and the type of construction, *e.g.*, IIIA, IIIB, of the addition shall determine the maximum height and area limitations.

D. Any facility that closes or has its license revoked, and for which application for re-licensure is made at the same site, shall be considered a new facility and shall meet the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent, for the building and its essential equipment and systems in effect at the time of application for re-licensing.

2004. Submission of Plans and Specifications (II)

A. In all new construction or existing buildings proposed to be licensed by the Department, plans and specifications shall be reviewed for compliance and shall be submitted to DHFC for review and acceptance.

1. The plans and specifications shall be prepared by an architect or engineer registered in the state of South Carolina and shall bear his or her seal, signature, and date.

2. Construction of, or within buildings, shall meet the requirements outlined in The Board of Architectural Examiners, South Carolina Department of Labor, Licensing, and Regulation.

3. When construction is planned for additions or alterations to existing facilities, the licensee shall contact DHFC regarding code and regulatory requirements that apply to that project. Plans and specifications, defined by DHFC, shall be submitted to that division for review.

4. Those facilities increasing the present bed capacity of the area served by an existing staff work area by more than fifteen percent (15%) shall meet the minimum square footage requirements for dining, recreation, and storage space for the total number of beds served by that staff work area.

5. All plans and specifications shall be drawn to scale with the title, location, and date indicated thereon.

6. Construction work shall not begin until the plans and specifications have been received and a project number issued (orally or in writing) to the facility representative by DHFC. Any construction deviations from the submitted documents shall be reviewed for acceptance.

B. If the start of construction is delayed for a period exceeding twelve (12) months from the date of DHFC acceptance, a new evaluation of the plan by DHFC is required.

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C. Plans and specifications are reviewed by DHFC, as necessary, to assure that an acceptable set of documents showing all necessary information has been submitted to the Department. These reviews may be, but are not required to be, in three (3) stages: Preliminary, Design Development, and Final.

D. The components of the three (3) stages submitted shall include the following:

1. Preliminary.

a. Plot plan showing:

(1) Size and shape of entire site, including existing and proposed significant topographic, environmental, transportation conditions and utilities including, but not limited to, buildings, vehicular movement, parking areas, information concerning water supply available for fire protection, distance to nearest fire hydrant; any hazardous areas, *e.g.*, cliffs, roads, hills, railroads, industrial and/or commercial sites, and bodies of water;

(2) Footprint showing orientation and location of proposed facility or alterations to the existing facility.

b. Floor plans showing blocked functional spaces (areas) of approximate size and shape and their relationship to other spaces;

c. Compartmentalization for smoke compartments (fire and life safety plan).

2. Design Development drawings shall indicate the following in addition to the requirements in Section 2004.D.1:

a. Cover sheet:

(1) Title and location of the project;

(2) Index of drawings;

(3) Code analysis listing applicable codes (both local jurisdiction and state);

(4) Occupancy classification per the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent;

(5) Type of construction per the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent;

(6) Legend and notes and symbols for pertinent information.

b. Floor plans:

(1) Dimensions of buildings;

(2) Locations, size, and purpose of all rooms, including furniture layout plan;

(3) Location and size of doors, windows, and other openings with swing of doors indicated;

(4) Life Safety plan showing all fire walls, exits, exit calculations, locations of smoke barriers, if required, fire-rated walls, locations of stairs, elevators, dumbwaiters, vertical shafts, and chimneys;

(5) Fixed equipment.

c. Outline specifications that include a description of construction, including interior finishes and mechanical systems.

3. Final submission shall include the requirements of Sections 2004.D.1 and D.2 in addition to complete working drawings and contract specifications, including layouts for site preparation and landscaping, architectural, plumbing, electrical, mechanical, signal system, and complete fire protection.

E. There shall be a separate kitchen floor plan for facilities that provide meal service operations. Construction shall be in compliance with Chapter VII (A - G) of R.61-25, and the floor plan shall depict:

1. Location of all equipment;

2. Make and model number of all equipment. All equipment used for the preparation and storage of food shall be approved and certified by the NSF International;

3. Garbage can wash pad on exterior with hot and cold running water;

4. Grease interceptor;

5. Floor drains;

6. Separate handwashing sinks;

7. Toilet and locker facilities for kitchen staff and volunteers;

8. Exhaust hood and duct system to the outside;

9. Hood extinguishing system.

F. Upon Department request, one (1) complete set of “as-built” drawings shall be filed with DHFC.

SECTION 2100 - GENERAL CONSTRUCTION REQUIREMENTS

2101. General (II)

Construction and installation of the following components shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent:

A. Height and Area Limitations.

B. Fire-Resistive Rating.

C. Vertical Openings.

D. Wall and Partition Openings.

E. Ceiling Openings.

F. Firewalls.

G. Floor Finishes.

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H. Wall Finishes.

I. Guardrails.

J. Ceilings.

K. Drainage Systems.

1. Drainage piping shall not be installed within the ceiling nor installed in an exposed location in food preparation, food serving, or food storage areas, and above electrical equipment, and other critical areas.

2. Special precautions shall be made to protect these areas from possible leakage or condensation from necessary overhead piping systems.

L. Elevators.

M. Corridors.

N. Ramps.

O. Landings.

P. Windows and Mirrors.

Q. Exits.

R. Building Systems, *i.e.*, Plumbing (Water Systems), Mechanical (Heating, Ventilation, and Air Conditioning), Electrical.

SECTION 2200 - HAZARDOUS ELEMENTS OF CONSTRUCTION

2201. Hazardous Elements (II)

Construction and installation of the following components shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent:

A. Furnaces and Boilers.

B. Dampers.

C. Incinerators.

1. Incinerators when used shall conform to the requirements of R.61-79.

2. Incinerators located within the facility shall be separated from the rest of the building by walls, partitions, floor and ceiling construction having a fire resistant rating of not less than two (2) hours.

3. Combustion air shall be discharged to the outside and ventilation air shall be taken from the outside.

SECTION 2300 - FIRE PROTECTION EQUIPMENT AND SYSTEMS**2301. Fire Protection (II)**

A. Construction and installation of the following equipment and systems shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent:

1. Firefighting Equipment.

a. Extinguishers shall be sized, located, installed, and maintained in accordance with NFPA No. 10 except that portable fire extinguishers intended for use in resident sleeping areas and in the corridors of resident areas shall be the two-and-a-half (2 1/2) gallon stored-pressure type water extinguisher. As an exception, where the facility identifies a need to protect fire extinguishers from resident tampering, the fire extinguisher may be located in a locked cabinet provided that all facility staff will have in their possession a clearly identifiable key that will operate all locked extinguisher cabinets in the facility. (I)

b. The kitchen shall be equipped with a minimum of one (1) K-type and one (1) 20-BC-type fire extinguisher. (I)

c. Each staff work area shall be equipped with a minimum of one (1) 2A:10BC-type fire extinguisher. (I)

d. To assure fire extinguishers remain functional, each shall be checked at least monthly by the facility.

2. Automatic Sprinkler Systems.

3. Fire Alarms.

a. The alarm system shall cause the central re-circulating ventilation fans that serve the area(s) of alarm origination to cease operation and to shut the associated smoke dampers.

b. Fire alarm pull-stations shall be at or near each staff work area and in other areas of the facility in accordance with NFPA 72.

c. The fire alarm system shall have the main alarm panel installed at a location that is constantly attended by staff. An audible and visual trouble indicator shall be located where it can be observed by staff members.

4. Smoke Detectors.

a. Smoke detectors shall be installed in all exit access corridors thirty (30) feet on center, no farther than fifteen (15) feet from any wall, and within five (5) feet of a smoke partition opening in accordance with NFPA 72 and the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent. As an exception, where each resident room is protected by a smoke detector(s) and detectors are provided on both sides of the rated smoke and fire partitions, such corridor system will not be required on the resident room floors.

b. Smoke detectors in resident rooms shall have a clearly visible indicator light in the corridor outside the door of the room to indicate when that smoke detector is activated. As an exception, when the fire alarm system is fully addressable, *i.e.*, each detector is identifiable and locatable by its signal, and there are sufficient annunciator panel(s) such that travel distance in any hall to an annunciator panel does not exceed

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fifty (50) feet, and the annunciator panel will indicate the activated smoke detector by location, the light over the door in the hall is not required.

c. All smoke detectors shall be electrically interconnected to the fire alarm system as well as to the hold-open devices on smoke doors and fire doors within a fire zone.

d. Smoke and/or heat detection systems shall be installed within, but not limited to, the following spaces: assembly spaces, utility rooms, storage rooms, janitor closets, laundry rooms, kitchens, mechanical and electrical rooms.

5. Flammable Liquids. (I)

a. The storage and handling of flammable liquids shall be in accordance with NFPA 30 and 99.

b. Flammable liquids such as gasoline, oil, paints, solvents, shall be stored in an outside building or in a one-hour fire separated room opening to the outside. Mechanical or gravity ventilation for the room shall be taken from, and exhausted to, the outside.

6. Gases.

a. Gases, *i.e.*, flammable and nonflammable, shall be handled and stored in accordance with the provisions of NFPA 99 and 101.

b. Installation, maintenance, and testing of piped gas systems shall meet the provisions of NFPA 99.

c. Safety precautions shall be taken against fire and other hazards when oxygen is dispensed, administered, or stored. All cylinders shall be appropriately secured. As an exception, in "Smoke-Free" facilities where smoking is prohibited, and where the facility nonsmoking policy is strictly enforced, and where "Smoke-Free" signs are strategically placed at all major entrances, secondary "No Smoking" signs shall not be required in and in the vicinity of resident rooms where oxygen is being administered. "No Smoking" signs shall be required in and in the vicinity of resident rooms and all other areas of the facility where oxygen is being stored. (I)

d. If used, clinical vacuum system installations shall be in accordance with the requirements of Compressed Gas Association publication regarding clinical vacuum systems.

7. Furnishings and Equipment.

a. The physical plant shall be maintained free of fire hazards or impediments to fire prevention.

b. No unvented fuel heaters shall be permitted in the facility. Portable electric heaters may be used for emergencies in accordance with South Carolina State Fire Marshal rules and regulations.

c. Fireplaces and fossil-fuel stoves, *e.g.*, wood-burning, shall have partitions or screens or other means to prevent burns. Fireplaces shall be vented to the outside. "Unvented" type gas logs are prohibited. Gas fireplaces shall have a remote gas shutoff within the room and not inside the fireplace.

d. Cubicle curtains, window dressings, portable partitions, wastebaskets, mattresses, and pillows shall be noncombustible, inherently flame-resistant, or treated or maintained flame-resistant in accordance with NFPA 701, Standard Methods of Fire Tests for Flame-Resistant Textiles and Films. As an exception, window blinds require no flame treatments.

e. The facility shall comply with all current state laws and regulations concerning smoking in the

facility, *i.e.*, S.C. Code Ann. Section 44-95-20 *et seq.* (1976, as amended).

B. Fire detection, alarm and extinguishing systems shall be inspected, tested, and maintained in accordance with the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent. (I)

SECTION 2400 - EXITS

2401. Number and Location of Exits (II)

A. Halls, corridors and all other means of egress from the building shall be maintained clear and free of obstructions.

B. Each resident room shall open directly to an approved exit access corridor without passage through another occupied space or shall have an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances. As an exception, two (2) resident rooms that share a common adjoining "sitting" area may share one (1) opening onto the exit access corridor or have an approved exit directly to the outside at grade level and accessible to a public space free of encumbrances. (I)

SECTION 2500 - WATER SUPPLY/HYGIENE

2501. Design and Construction (II)

A. A water distribution system, provided by a public or private source, shall be approved by the Department's Bureau of Water prior to facility construction and/or beginning operation.

B. The facility's water system shall be in compliance with R.61-58 and other State, Federal, and local laws and regulations.

C. Prior to construction, expansion, or modification of a water distribution system, application shall be made to the Department's Bureau of Water for a Permit for Construction. The application shall include such engineering, chemical, physical, or bacteriological data as may be required by the Department and shall be accompanied by engineering plans, drawings, and specifications prepared by an engineer registered in South Carolina and shall include his or her signature and official seal.

D. Construction and installation of stop valves and cross-connections shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

2502. Disinfection of Water Lines (I)

A. After construction, expansion, or modification, a water distribution system shall be disinfected in accordance with R.61-58.

B. Samples shall be taken from the water system and forwarded to a certified laboratory for total coliform analysis in accordance with R.61-58. The water shall not be used as a potable supply until certified as satisfactory.

C. When a water supply as approved by the Department in accordance with R.61-58 is not available, a water supply shall be provided that meets the requirements of the Department. Prior to construction of such a water supply, the engineer shall obtain a permit to construct from the Department. Before placing the water supply into service, a final approval shall be obtained from the Department.

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2503. Temperature Control (II)

A. Plumbing fixtures that require hot water and that are accessible to residents shall be supplied with water that is thermostatically controlled to a temperature of at least one-hundred (100) degrees Fahrenheit and not to exceed one-hundred and twenty (120) degrees Fahrenheit at the fixture. (I)

B. The water heater or combination of heaters shall be sized to provide at least six (6) gallons per hour per licensed bed at the temperature range indicated in Section 2503.A.

C. The temperature of hot water supplied to kitchen equipment, utensil sinks, dish machines, and sanitizers shall be maintained in accordance with requirements outlined in R.61-25. As an exception, hot water supplied to the kitchen equipment, utensil sinks, dish machines, and sanitizers may be supplied at no less than one-hundred and twenty (120) degrees Fahrenheit provided all kitchen equipment and utensils are chemically sanitized.

D. Hot water provided for washing linen and clothing shall not be less than one-hundred and sixty (160) degrees Fahrenheit. Should chlorine additives or other chemicals that contribute to the margin of safety in disinfecting linen and clothing be a part of the washing cycle, the minimum hot water temperature shall not be less than one-hundred and ten (110) degrees Fahrenheit, provided hot air drying is used.

E. Hot water distribution systems shall be of the recirculating type to assure hot water at each hot water outlet at all times.

2504. Design and Construction of Wastewater Systems (II)

A. A wastewater system, provided by a public or private source, shall be approved by the Department's Bureau of Water prior to facility construction and/or beginning operation.

B. The wastewater system for commercial kitchens shall be in accordance with R.61-25.

SECTION 2600 - ELECTRICAL

2601. General

A. Construction and installation of the following electrical systems shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent:

1. Panelboards. The panelboard directory shall be labeled to conform to the actual room numbers or designations. (II)

2. Lighting.

a. Artificial light shall be provided to include sufficient lighting for reading, observation, and activities. There shall be a minimum of thirty-five (35) foot-candles in areas used for reading, study, or close work. Lighting in work areas and medication preparation areas shall not be less than thirty (30) foot-candles. (II)

b. Resident rooms shall have lighting that provides a minimum of twenty (20) foot-candles in all parts of the room and shall have at least one (1) light fixture for night lighting. The switches to the main and night lighting shall be located at the strike side of the entrance door in each resident room and shall be of the quiet operating type. (II)

c. All food preparation areas, equipment and utensil washing areas, handwashing areas, toilet areas for kitchen staff and volunteers, walk-in refrigeration units, dry food storage areas, and dining areas during cleaning operation shall be lighted in accordance with R.61-25.

3. Receptacles.
4. Ground Fault Protection. (I)
5. Exit Signs. (I)

B. All electrical wiring, installations and equipment shall be maintained in a safe, operable condition in accordance with NFPA 70 and 99 and shall be inspected at least annually by a licensed electrician, registered engineer, or certified building official. (II)

C. The use of electrical extension cords is prohibited, except as noted below. (II)

1. Extension cords may be used for small personal appliances, such as floor lamps, table lamps, radios.
2. Extension cords shall be connected to only one (1) device to prevent overloading of the circuit.
3. Extension cords shall be properly secured and not be placed overhead, under carpets or rugs, or anywhere that the cord can cause trips, falls, or overheat.
4. Power strips may be used for data processing equipment, *e.g.*, computer, monitor, printer. Power strips shall not be used with medical devices in resident care areas or as a substitute for adequate electrical outlets.

2602. Emergency Electrical Service (II)

A. Construction and installation of emergency electrical service shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

B. An emergency generator shall be provided to deliver emergency electrical service during interruption of the normal electrical service.

C. Emergency electrical service shall be provided to the distribution system as follows:

1. Exit lights and exit directional signs;
2. Exit access corridor lighting;
3. Lighting of means of egress and staff work areas;
4. Fire detection and alarm systems;
5. In resident care areas (duplex receptacles in corridors or in resident rooms);
6. Signal system;
7. Equipment necessary for maintaining telephone service;

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8. Elevator service that will reach every resident floor when rooms are located on other than the ground floor;

9. Fire pump;

10. Equipment for heating resident rooms;

11. Public restrooms;

12. Essential mechanical equipment rooms;

13. Battery-operated lighting and a receptacle in the vicinity of the emergency generator;

14. Alarm systems, water flow alarm devices, and alarms required for medical gas systems;

15. Resident records when solely electronically based.

D. Receptacles and switches connected to emergency power shall be distinctively marked.

E. Emergency generators shall be operated weekly for at least thirty (30) minutes and shall be operated at least monthly under load for at least thirty (30) minutes. Within one (1) year of the effective date of this regulation, emergency generators shall be tested at least once every thirty-six (36) months for a minimum of four (4) continuous hours.

SECTION 2700 - HEATING, VENTILATION, AND AIR CONDITIONING

2701. General (II)

Prior to licensure of the facility, all mechanical systems shall be tested, balanced and operated to demonstrate that the installation and performance of these systems conform to the requirements of the plans and specifications.

2702. Heating, Ventilation, Air Conditioning (II)

A. Design temperature range for all occupied areas shall be seventy-one degrees (71 degrees Fahrenheit) minimum at winter design conditions, and eighty-one degrees (81 degrees Fahrenheit) maximum at summer design conditions.

B. The HVAC system shall be inspected at least annually by a certified and/or licensed technician.

C. An Airborne Infection Isolation room that meets current ASHRAE standards shall be provided in the manner designated by guidelines established by the Department if the facility's tuberculosis risk assessment (See Sections 101.BBBB and 1802) identifies such a need.

SECTION 2800 - PHYSICAL PLANT

2801. Facility Accommodations and Floor Area (II)

A. The facility shall provide a decorative, homelike, and comfortable environment that shall include, but not be limited to, pictures, books, magazines, clocks, plants, current calendars, stereos, television, and appropriate holiday or seasonal decorations. Consideration shall be given to the preferences of the residents in determining an appropriate homelike atmosphere in resident rooms and activity and dining areas.

B. There shall be sufficient living arrangements providing for residents' quiet reading, study, relaxation, entertainment, or recreation, to include living, dining, and recreational areas available for residents' use.

C. At least thirty (30) square feet per licensed bed shall be provided for resident dining and recreation.

D. All required care and services furnished at the facility shall be provided in a manner that does not require residents to ambulate from one site to another outside the building(s), nor impede residents from ambulating from one site to another due to the presence of physical barriers.

E. Methods for assuring visual and auditory privacy between residents, staff, and visitors shall be provided, as necessary.

2802. Resident Rooms

A. Each resident room shall be equipped with the following as a minimum for each resident:

1. A comfortable single bed equipped with assist rails when required for the safety or mobility of the resident, having a mattress with moisture-proof cover, sheets, blankets, bedspread, pillow, and pillowcases; roll-away type beds, cots, bunkbeds, and folding beds shall not be used. It is permissible to utilize a double bed, a recliner in lieu of a bed, remove a resident bed and place the mattress on a platform or pallet, or utilize a hometype bed, provided the space available in the room is adequate. Such cases of alternative bedding arrangements shall be approved by a physician or other legally authorized healthcare provider. As an exception, in the case of a couple sharing the same room, a double bed is permitted in lieu of two (2) licensed single beds if requested by the couple and approved by a physician or other legally authorized healthcare provider. For all other requirements, this room shall be considered a resident room with two (2) licensed beds; (II)

2. A closet or wardrobe, with at least four (4) square feet of floor space and at least five (5) feet of vertical hanging space, a bureau, and a compartmentalized bedside table or nightstand to adequately accommodate each resident's personal clothing, belongings, and toilet articles. Built-in storage is permitted. As an exception, in existing facilities, if square footage is limited, residents may share these storage areas; however, specific spaces within these storage areas shall be provided particular to each resident;

3. A comfortable chair;

4. A reading lamp, at least one (1) wastebasket, and an overbed table, as needed;

5. With the exception of furniture (unless otherwise allowed by facility policy), a resident shall have the choice to bring familiar items from home as part of the furnishing to his or her room, *e.g.*, wall pictures, paintings, vases.

B. Each resident room shall be an outside room with an outside window or door. This window or door shall not open onto a common enclosed area, *e.g.*, screened porch. (II)

C. There shall be at least two (2) lockable casters on each bed, located either diagonally or on the same side of the bed.

D. Beds of household height may be used provided hospital type beds that can be elevated and adjusted are provided as necessary to enhance care delivery.

E. Beds shall not be placed in corridors, solaria, or other locations not designated as resident room areas. (II)

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F. No resident room shall contain more than three (3) beds. There shall be at least three (3) feet between beds. (II)

G. No resident room shall be located in a basement.

H. Access to a resident room shall not be by way of another resident room, restroom, or kitchen.

I. No resident room shall be located more than one-hundred and fifty (150) feet from the staff work area.

J. Equipment such as bedpans, urinals, and emesis basins, necessary to meet resident needs, shall be provided. (II)

K. Assist rails may be utilized when required for safety or resident mobility. When there are special concerns, *e.g.*, residents with Alzheimer's disease and/or related dementia, assist rail usage shall be monitored by staff members in accordance with facility policies and procedures. (II)

L. Cubicle curtains with built-in curtain tracks shall be provided in all multiple bed rooms, which will shield each bed from other beds and also shield each bed from view from the corridor when the room door to the corridor is open. (II)

M. Consideration shall be given to resident compatibility in the assignment of rooms for which there is multiple occupancy.

N. At least one (1) private room, if available, shall be provided in each area served by a staff work area for incompatibility, personality conflicts, *etc.* (II)

2803. Resident Room Floor Area

A. The resident room floor area is a usable or net area and does not include wardrobes (built-in or freestanding), closets, entry door swing area, or the entry alcove to the room. The following is the minimum floor space allowed: (II)

1. Rooms for only one (1) resident: one-hundred (100) square feet;
2. Rooms for more than one (1) resident: eighty (80) square feet per resident.

B. In determining room design, consideration shall be given to the needs of the resident(s) including, but not limited to, accessibility to bed, restroom, closet, and possessions.

2804. Isolation Room (II)

At least one (1) single resident room shall be designated for an infection isolation room, as needed, and shall have:

1. An adjoining room with a toilet and a handwashing sink;
2. A handwashing sink located between the entry door and the nearest bed;
3. An uncarpeted floor.

2805. Baths and Restrooms

A. Separate bathroom accommodations, toilet, and handwashing sink shall be provided in sufficient numbers to serve the needs of staff members.

B. In baths and restrooms, the restroom floor area shall not be less than thirty (30) square feet. If the room contains only a toilet and handwashing sink, the minimum area of the room shall be eighteen (18) square feet. (II)

C. For residents, the minimum number of toilets shall be one (1) toilet for each four (4) licensed beds or fraction thereof.

D. There shall be at least one (1) handwashing sink adjacent to each toilet. (II)

E. There shall be one (1) bathtub or shower for each twelve (12) licensed beds or fraction thereof. (II)

F. All bathtubs, toilets, and showers used by residents shall have approved grab bars securely fastened in a usable fashion on at least one (1) side of the bathtub, toilet, and shower and shall be mounted thirty-three to thirty-six (33-36) inches above the floor. (II)

G. Privacy shall be provided at toilets, urinals, bathtubs, and showers. (II)

H. Toilets shall be provided for meal service staff and shall be located at, or near, the kitchen. The doors of all restrooms located at, or near, the kitchen shall be self-closing. These restrooms shall be located within the same building.

I. Facilities for persons with disabilities shall be provided as per the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent, regardless whether any of the residents are classified as having a disability. (II)

J. All restroom floors shall be covered with an approved nonabsorbent covering. Walls shall be nonabsorbent, washable surfaces to the highest level reached by splash or spray. (II)

K. There shall be a mirror above each restroom handwashing sink. (II)

L. An adequate supply of toilet tissue shall be maintained in each restroom.

M. Easily cleanable waste receptacles shall be provided.

N. Soap, bath towels, and washcloths shall be provided to each resident as needed. Bath linens assigned to specific residents may not be stored in centrally located restrooms. As an exception, bath linens assigned to specific residents for immediate use may be stored in the restroom provided the restroom serves a single occupancy (one (1) resident) room, or is shared by occupants of adjoining rooms, for a maximum of six (6) residents. A method that distinguishes linen assignment and discourages common usage shall be implemented. (II)

2806. Handwashing Sinks

A. Each resident room shall have a handwashing sink unless there is an adjoining toilet with a handwashing sink.

B. Each handwashing sink used for handwashing shall be equipped with valves that can be operated without the use of hands.

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C. Separate handwashing fixtures shall be provided in the main kitchen, convenient to serving, food preparation, and dishwashing areas, and shall be so located that the individual in charge may supervise handwashing by meal service staff. (II)

D. Handwashing fixtures shall be provided in other service rooms and adjacent to or in all restrooms. (II)

E. Handwashing fixtures shall include hot and cold or tempered running water, handcleansing antibacterial soap from an approved dispenser, and a sanitary individualized method of drying hands. (II)

2807. Staff Work Area (II)

A. A staff work area shall be provided for each sixty (60) licensed beds or fraction thereof.

B. The staff work area shall contain at least a telephone, bulletin board, a refrigerator and adequate space for maintaining resident records as well as for administrative activities.

C. A restroom used exclusively by staff shall be provided in close proximity to the staff work area.

2808. Medicine Preparation Room (II)

There shall be at, or near, each staff work area a separate space for the storage of supplies and a separate medicine preparation room having a cabinet with one (1) or more locked sections for medications, narcotics and poisons, cabinet space, work space, and handwashing sink. As an exception, in lieu of a medicine preparation room, a medicine work area equipped as described in Section 2808 shall be acceptable under the following conditions:

1. A unit dose system is used in which final medication preparation is not performed at or near the staff work area; and

2. A twenty-four-hour (24-hour) pharmacy is on the premises; and

3. Written procedures are in place that preclude medication preparation.

2809. Signal System (II)

A. A signal system listed and tested by a recognized testing laboratory for use in nursing homes shall be provided for each resident. The system shall consist of:

1. A signal device for each bed, toilet, shower, bathtub, treatment, and examination room used by residents that shall be easily accessible and reachable at all times by the resident;

2. A light over each resident room door visible from the corridor;

3. A control panel receiver at the staff work area showing room or bed number;

4. Indicators in utility rooms, treatment and examination rooms, medicine preparation rooms, nurse lounges, and nourishment stations.

B. Indicators and control panels shall employ an audible and visual signal.

2810. Meal Service Operations

A. Meal service operations shall be separated from living and sleeping quarters by complete, ceiling-high walls, and a minimum one and three-quarter (1 3/4) inch solid wood core, self-closing doors with positive latching hardware. As an exception, doors and partitions are not required if the open kitchen area is protected by an automatic sprinkler system that provides a deluge type "water curtain," based on the spacing and design requirements of NFPA 13, around the entire open space and as approved by the Department.

B. All kitchen areas shall be adequately ventilated to protect from excessive heat, steam, condensation, vapors, smoke, and fumes.

2811. Utility Rooms (II)

A. At least one (1) soiled utility room per staff work area shall be provided that contains a clinical sink, work counter, and waste receptacle. As an exception, the clinical sink shall not be required if each resident toilet is equipped with bedpan cleaning lugs, spray hose and elevated vacuum breaker.

B. At least one (1) clean utility room per staff work area shall be provided that contains a work counter with handwashing sink and space for the storage and assembly of supplies for nursing procedures.

2812. Doors (II)

A. Doors to resident occupied rooms (sleeping or treatment) shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent, and large enough to accommodate bed movement.

B. Door widths on exit doors, bath and restroom door openings, and doors that have locks shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

C. All resident rooms, restrooms, and rooms where bathing takes place shall have nontransparent doors.

D. All glass doors, including sliding or patio type doors shall have a contrasting or other indicator that causes the glass to be observable, *e.g.*, a decal located at eye level.

E. Exit doors required from each floor shall swing in the direction of exit travel. Doors, except those to spaces such as small closets that are not subject to occupancy, shall not swing into corridors in a manner that obstructs corridor traffic flow or reduces the corridor width to less than one-half the required width during the opening process.

F. Doorways from resident occupied rooms or exit-access passageways to the outside of the facility shall be at least eighty (80) inches in height and forty-four (44) inches in width.

2813. Elevators (II)

A. Buildings having resident accommodations, such as resident rooms, dining rooms, recreation areas, located in an area other than the main floor, shall have at least one (1) elevator that can transport a hospital-type bed.

B. Elevators shall be inspected and tested upon installation, prior to first use, and annually thereafter by a certified elevator inspector.

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2814. Ramps (II)

Ramps shall discharge onto a surface that is firm and negotiable by persons with disabilities in all weather conditions and to a location accessible for loading into a vehicle.

2815. Landings (II)

Exit doorways shall not open immediately upon a flight of stairs. A landing shall be provided that is at least the width of the door and is the same elevation as the finished floor at the exit.

2816. Handrails (II)

Handrails, which are located not less than thirty (30) inches nor more than thirty-six (36) inches above the finished floor shall be provided on both sides of halls and/or corridors. Ends of handrails shall return to the wall.

2817. Screens (II)

Windows, doors and openings intended for ventilation shall be provided with insect screens unless the facility is completely air conditioned and mechanically ventilated.

2818. Window Dressings (II)

In restrooms and resident rooms, window dressings shall provide privacy.

2819. Janitor's Closet (II)

A lockable janitor's closet of a minimum of twenty (20) square feet shall be provided for each area served by a staff work area and main food preparation center. Each closet shall be equipped with a mop sink or receptor and space (shelves and brackets) for the storage of supplies and equipment.

2820. Storage Areas

A. Storage buildings on the premises within thirty (30) feet of the facility shall meet the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent. Storage in buildings other than on the facility premises shall be secure and accessible. An appropriate controlled environment shall be provided if necessary for storage of items requiring such an environment.

B. At least ten (10) square feet per licensed bed shall be provided for storage areas. Each area served by a staff work area shall contain separate spaces for the storage of clean linen, soiled linen, wheelchairs, and supplies and equipment. (II)

C. In storage areas provided with a sprinkler system, a minimum vertical distance of eighteen (18) inches shall be maintained between the top of stored items and the sprinkler heads. The tops of storage cabinets and shelves attached to or built into the perimeter walls may be closer than eighteen (18) inches below the sprinkler heads. In nonsprinklered storage areas, there shall be at least twenty-four (24) inches of storage clearance from the ceiling. (I)

D. In mechanical equipment rooms used for storage, the stored items shall be located away from mechanical equipment and shall not be stored in a manner that might create a fire or other hazard. (I)

E. Supplies and equipment shall not be stored directly on the floor. Supplies and equipment susceptible to water damage or contamination shall not be stored under sinks or other areas with a propensity for water leakage. (II)

F. Sufficient space shall be provided in each area served by a staff work area for stretcher and wheelchair parking. Such space shall be out of corridor traffic.

2821. Telephone Service

At least one (1) telephone shall be available and easily accessible on each floor of the facility for use by residents for their private, discretionary use. Telephones shall be portable to accommodate bedridden or ambulatory-impaired residents. Telephones capable of only local calls are acceptable for this purpose, provided other arrangements exist to offer residents discretionary access to a telephone capable of long distance service.

2822. Facility Design and Site Location

A. Facility design and site location shall conform to the requirements of the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

B. Outdoor areas routinely used by residents where unsafe, unprotected physical hazards exist shall be enclosed by a fence or a natural barrier of a size, shape, and density that effectively impedes access to the hazardous area. Such areas include, but are not limited to, steep grades, cliffs, open pits, high voltage electrical equipment, ponds and swimming pools, and roads exceeding two (2) lanes, excluding turn lanes. (I)

C. Fenced areas that are part of a fire exit from the building shall have a gate that unlocks in case of emergency per Special Locking Arrangements in the applicable sections of the adopted State, Federal, or local codes, ordinances, and regulations, whichever is most stringent.

D. Mechanical or equipment rooms that open to the outside of the facility shall be protected from unauthorized individuals. (II)

E. Swimming pools shall be designed, constructed, and maintained pursuant to R.61-51. (II)

SECTION 2900 - SEVERABILITY

2901. General

In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect as if such invalid portions were not originally a part of these regulations.

SECTION 3000 - GENERAL

3001. General

Conditions arising that have not been addressed in these regulations shall be managed in accordance with the best practices as interpreted by the Department.

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Fiscal Impact Statement:

There will be no cost to the Department, the State and its political subdivisions. Cost will be met in part by licensing fees imposed by this regulation revision. There will be minimal costs to the regulated community. See Statement of Need and Reasonableness below.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to the S.C. Code Ann. Sections 1-23-115(C)(1)-(3) and (9)-(11) (1976, as amended).

DESCRIPTION OF REGULATION:

Purpose of the Regulation: Revision of this regulation satisfies a legislative mandate requiring the Department perform a review of its regulations every five years and update them if necessary. The revision of the regulation has been rewritten in its entirety to include, but not be limited to: update and expand definitions; clarify licensing requirements; update by adding licensing late fee amounts; describe inspection and reporting requirements; add reference to Departmental consultations; update enforcement action procedures; add facility policy/procedures and quality improvement standards; clarify admission and retention standards; add resident restraints and safety precaution standards; update staff training requirements; update sections related to treatment, services, and care; update sections regarding resident record content and maintenance; add quality initiatives related to the resident's experience of care; update physical examination and tuberculin screening requirements; add infection control standards; add standards related to advancing technology and electronic records; update medication management standards; add reporting requirements; add resident rights and assurances standards; update dietary and meal service requirements; add emergency procedures/disaster preparedness and facility evacuation standards; amend design, construction, and fire prevention requirements; add exceptions related to the operation of nursing homes; and add a severability clause.

Legal Authority: S.C. Code Ann. Section 44-7-250, et seq. (2002 and Supp. 2006).

Plan for Implementation: The revision will take effect upon publication in the State Register following approval by the Board of Health and Environmental Control and the S.C. General Assembly. The revision will be implemented by providing the regulated community with copies of the regulation and enforced through inspections by the Department.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

This regulation is needed and reasonable because its development will satisfy a legislative mandate pursuant to S.C. Code Ann. Section 1-23-120.

The regulation was last revised February 28, 1992. Since that time there has been added emphasis regarding emergency preparedness; there have been changes in applicable laws, *e.g.*, minimum resident-staff ratios for nursing homes, criminal record checks of direct care staff, Alzheimer's Special Care Disclosure Act, Bill of Rights for Residents of Long-Term Care Facilities, and changes in national building standards, *i.e.*, International Building Code, and there have been certain guidelines, directives, interpretations, and changes in Division policy that have led to the necessity to revise this regulation in order to make it more up-to-date.

DETERMINATION OF COSTS AND BENEFITS:

There will be no cost to political subdivisions of the state. There will be minimal costs to the regulated community.

Processing applications for the nursing home licensing program requires considerable commitment of the Department's fiscal resources. Inflation has increased the costs associated with inspections, investigations, processing licenses, and travel. Program costs have been incurred for increased confidentiality requirements of Department records, all contributing to an overall increase in costs to run an effective program. The anticipated growth of elderly citizens needing nursing home care in South Carolina will increase the demands on Department staff and resources. In addition, in expanding its enforcement of the regulation, the Department has increased its onsite consultation efforts to foster regulatory compliance and such activity is an added cost.

The program will be able to continue service to the state's nursing home providers and residents in a timely, effective and efficient manner. The public's health and environment will be protected by the continued vigilance of regulatory oversight of this program.

Monies generated over and above the costs of the current program go into the general fund to cover the costs of inflation and increased costs incurred over the years.

UNCERTAINTIES OF ESTIMATES:

None

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

There will be no effect on the environment. The regulation revision will promote public health by updating standards for regulating nursing homes.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REVISED REGULATION IS NOT IMPLEMENTED:

There will be an adverse effect on the public health if the regulation revision is not implemented since it is likely that continuing to utilize an outdated regulation for regulatory purposes would not advance the promotion of prevention of negative health outcomes.

Statement of Rationale:

Since the S.C. Code Ann. Section 1-23-120 directs that staff of State agencies review their regulations every five years and update them if necessary, Department staff determined during its review of R.61-17 that it was appropriate to revise the regulation. R.61-17 was last revised in 1992. See the Statement of Determination of Need and Reasonableness above for more information regarding the factors influencing the Department staff decision to revise the regulation.

Document No. 3162
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 61

Statutory Authority: 1976 Code Section 48-1-10 et seq.

61-86.1. Standards of Performance for Asbestos Projects

Synopsis:

The Department has substantially amended Regulation 61-86.1, Standards of Performance for Asbestos Projects, to update and clarify certain sections of the regulation to provide consistency where applicable with Federal Regulations, to clarify certain sections of the regulation to improve compliance rates, and to reorganize parts of the regulation to be more user friendly. Language in the regulation has also been updated to correlate with changes in the administrative appeals process pursuant to 2006 S.C. Act 387. Due to numerous changes throughout the regulation, R.61-86.1 will be replaced in its entirety. See Discussion of Revisions below and Statements of Need and Reasonableness herein.

Discussion of Revisions:

SECTION CITATION:	EXPLANATION OF CHANGE:
Table of Contents	Titles and page numbers added and revised to reflect amended text.
Section I.	Definition of “Abatement” unchanged.
Section I.	Definition of “Adequately Wet” is unchanged.
Section I.	For the definition of “Aggressive clearance sampling”: added “(s)” to blower.
Section I.	For the definition of “AHERA”: added “Regulations developed pursuant to the” and “(October 30, 1987)”.
Section I.	Definition of “AIHA” is unchanged.
Section I.	For the definition of “Airlock”: added “comma (,)” after “contaminated areas”; removed “further” after “thereby”; and added “further” after contamination.
Section I.	Definition of “Air sampler” is renumbered.
Section I.	Definition of “Air sampling” is renumbered.
Section I.	For the definition of “Amended water”: added “(for example, a non-sudsing detergent)”.
Section I.	For the definition of “Area air sampling”: added “regulated”.
Section I.	Definition of “Asbestos” is unchanged.
Section I.	For the definition of “Asbestos abatement entity”: added comma “(,)” after “concern” and “religious”; removed “who”; and added “that”.

- Section I. For the definition of “Asbestos containing material (ACM)”: renumbered; removed “1”; added “one”; added “(1%)”; and added “(NOTE: “Appendix A to Subpart F” has been redesignated as, and shall hereinafter be referred to as, “Appendix E to Subpart E” - 60 FR 31917, June 19, 1995.)”.
- Section I. Definition of “Asbestos containing waste materials” is renumbered.
- Section I. For the definition of “Asbestos project”: renumbered; removed “or other disturbance of regulated asbestos-containing materials (RACM). This also includes demolition of a regulated facility.” and added “encapsulation, enclosure, renovation, repair, removal, any disturbance of regulated asbestos containing materials (RACM), and demolition of a regulated facility.”
- Section I. For the definition of “Asbestos project design”: renumbered; removed “which” and replaced with “that”.
- Section I. For the definition of “Asbestos training course”: renumbered; added “in any discipline listed herein (for example, workers, supervisors, management planners, etc.)”; removed “specific”; added “of this regulation and is acceptable for licensing purposes”; and removed “for qualification of an applicant seeking a license in any of the specific work practice topics or disciplines”.
- Section I. For the definition of “Asbestos training course instructor”: renumbered; added hyphen “(-)” between “Department” and “approved”; removed “who meets the qualification requirements, as prescribed in Section XV of this regulation, for”; added “who will”; removed “ing” from “teaching”; removed “for teaching work practice or”; added “Department-approved”; removed “specific”; added “and/or” after “initial”; and added “and who meets the qualifications of this regulation”.
- Section I. For the definition of “Asbestos training course provider”: renumbered; added “of this regulation”; removed “specific”; and added “, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course”.
- Section I. For the definition of “ASHARA”: added “Regulations developed pursuant to 40 CFR Part 763, Subpart E, Appendix C Model Accreditation Plan,” and “(November 28, 1992)”.
- Section I. Definition of “Authorized visitor” is unchanged.
- Section I. Definition of “Background monitoring” is unchanged.
- Section I. For the definition of “Building Inspection”: added “by a Department-licensed asbestos building inspector” and removed “asbestos-containing materials ()”.
- Section I. Definition of “Building inspector” is unchanged.
- Section I. For the definition of “Category I nonfriable asbestos containing material (ACM)”: added hyphen “(-)” between “asbestos” and “containing”; added “and” after “gaskets”; removed “more”; added “greater”; removed “1”; added “one”; added “(1%)”; removed “A” after “Appendix” and replaced with “E”;

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- removed “F” after “Subpart” and replaced with “E”; and removed “Section 1”.
- Section I. For the definition of “Category II nonfriable ACM”: deleted comma “(,)” after “ACM”; added “and” after ACM; removed “more”; added “greater”; added “one”; removed “1”; added “(1%)”; removed “A” after “Appendix” and replaced with “E”; removed “F” after “Subpart” and replaced with “E”; and removed “Section 1”.
- Section I. For the definition of “Clean room”: “which” is removed and replaced with “that”; removed “with”; and added “and that has”.
- Section I. Definition of “Clearance monitoring” is unchanged.
- Section I. For the definition of “Commercial labor provider”: comma “(,)” added after corporation; added “that is”, removed “which”; and added “does”.
- Section I. Definition of “Consultant” removed. Category does not exist and is not licensed by the Asbestos Program.
- Section I. For the definition of “Contractor”: renumbered and removed “who”.
- Section I. For the definition of “Control measure”: renumbered; added comma “(,)” after “glove-bag”; and deleted hyphen “(-)” between “glove” and “bag”.
- Section I. For the definition of “Critical barrier”: renumbered; added “At minimum, two independent layers of 6-mil plastic sheeting applied to any opening into a work area in a manner that creates a”; removed “A” and “applied from”; and added “switches, outlets”.
- Section I. Definition of “Cut” renumbered.
- Section I. For the definition of “Decontamination enclosure system”: renumbered; “which” is removed and replaced with “that”; added comma “(,)” after “materials”.
- Section I. For the definition of “Demolition”: renumbered; and “or moving of a structure” is added.
- Section I. For the definition of “Department”: renumbered; and “’s Asbestos Section” is added.
- Section I. Definition of “Electrical generating facility” renumbered.
- Section I. For the definition of “Emergency operation”: renumbered; added comma after “that” and after “to”.
- Section I. For the definition of “Encapsulation”: renumbered; “which” is removed and replaced with “that”.
- Section I. Definition of “Enclosure” renumbered.
- Section I. Definition of “EPA” renumbered.

- Section I. For the definition of “Equipment room”: renumbered; “which” is removed and replaced with “that”; and “with” is removed and replaced with “and that has”.
- Section I. Definition of “Examination date” added to replace existing definition of issue date.
- Section I. Definition of “F/cc” is unchanged.
- Section I. Definition of “Facility” is unchanged.
- Section I. Definition of “Facility component” is unchanged.
- Section I. For the definition of “Friable”: removed “may be” and added “can be or has been”.
- Section I. For the definition of “Friable asbestos containing material”: added comma “(,)” after that and dry; removed comma “(,)” after powder; removed “which”; removed “more”; added “greater”; removed “1”; added “one”; added “(1%)”; removed “A” after Appendix and replaced with “E”; removed “F” after Subpart and replaced with “E”; removed “Section 1”.
- Section I. Definition of “Goose Neck” added in response to stakeholder request.
- Section I. Definition of “Glove-bag” renumbered and renamed “Glovebag” and changed all references to “glove-bag” to “glovebag.”
- Section I. Definition of “Grind” renumbered.
- Section I. For the definition of “HEPA filter”: renumbered and “which” is removed and replaced with “that”.
- Section I. Definition of “Homogeneous Area” using Asbestos Hazard Emergency Response Act (AHERA) definition added for clarification.
- Section I. Definition of “HVAC” renumbered and comma “(,)” added after ventilation.
- Section I. For the definition of “Industrial manufacturing facility”: renumbered; “which” is removed and replaced with “that”; comma “(,)” added after “39”; and “an” is added.
- Section I. Definition of “In poor condition” renumbered.
- Section I. Definition of “Installation” renumbered.
- Section I. For definition of “Issue date”: renumbered and added to replace old definition.
- Section I. Definition of “Leak-tight” renumbered and comma “(,)” added after solids.
- Section I. For the definition of “License”: renumbered, “which” is removed and replaced with “that”, and “consultant” is removed.

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- Section I. Definition of “Long-term, in-house contractor” renumbered.
- Section I. Definition of “Management planner” renumbered.
- Section I. Definition of “Manometer” added for clarification.
- Section I. For the definition of “Minor project”: renumbered; “less” removed and replaced by “fewer” twice and “is” removed and replaced by “are” twice.
- Section I. For the definition of “Movable object”: renumbered; “easily removed” replaced by “moved”; comma “(,)” added after “e.g.”.
- Section I. Definition of “Negative pressure differential equipment” renumbered.
- Section I. Definition of “NESHAP” renumbered.
- Section I. For the definition of “NESHAP project”: renumbered; “regulated asbestos containing material ()” added; and “being” added.
- Section I. Definition of “NIOSH” renumbered.
- Section I. Definition of “Non-Industrial facility” added to clarify that any public, institutional or governmental agency not meeting definition for industrial manufacturing or electrical generating facility is considered a non-industrial facility and can obtain an employee group license.
- Section I. For the definition of “Operation and maintenance activity”: renumbered; added “(O&M)”; removed “which”; changed “glove-bag” to “glovebag”; and replaced with “that” twice.
- Section I. Definition of “O&M Worker” added to clarify that an O&M worker can only be licensed under a group license.
- Section I. Definition of “OSHA” renumbered.
- Section I. Definition of “Owner/Operator” renumbered.
- Section I. For the definition of “Owner’s representative”: renumbered and “consultant” removed and replaced with “supervisor, management planner, project designer”.
- Section I. Definition of “Personal air sampling” renumbered.
- Section I. For the definition of “Planned renovation operations”: renumbered; comma “(,)” added after removed; and comma “(,)” removed after time.
- Section I. Definition of “Process date” replaced by more representative definition, “Issue Date”.
- Section I. Definition of “Project designer” renumbered.
- Section I. Definition of “Reciprocity” renumbered.

- Section I. Definition of “Regulated area” added for consistency with Occupational Safety and Health Administration (OSHA) standards.
- Section I. For the definition of “Regulated asbestos containing material (RACM)”: renumbered and added “drilling”.
- Section I. Definition of “Removal” renumbered.
- Section I. For the definition of “Renovation”: renumbered; removed comma “(,)” after facility and added hyphen “(-)” between load and supporting.
- Section I. For the definition of “Repair”: renumbered; added “Returning damaged asbestos-containing material to an undamaged condition or to an intact state so as to prevent fiber release.”; and removed “Procedure other than enclosure or encapsulation used to patch, cover, or otherwise restore damaged ACM asbestos-containing material other than enclosure or encapsulation”. This change was made per AHERA requirements.
- Section I. For the definition of “Resilient floor covering”: renumbered; removed “1”; added “one”; added “greater” to replace “more”; added “(1%)”; added “40 CFR Part 463,” before Appendix; removed “A” after Appendix and replaced with “E”; removed “F” after Subpart and replaced with “E”; and removed “40 CFR Part 463, Section 1” before polarized.
- Section I. Definition of “Roofing materials” removed. Proposed regulatory revision eliminates the section for roofing projects, thereby, eliminating the need for the definition of roofing material. Roofing projects will be considered as outdoor removals.
- Section I. Definition of “Shower room” renumbered.
- Section I. For the definition of “Small project”: renumbered; “less” removed and replaced by “fewer” twice; “is” removed and replaced by “are to be” twice; and “than less” removed and replaced by “fewer”.
- Section I. Definition of “Start date” renumbered and a hyphen “(-)” has been placed between “Departmental” and “issued”.
- Section I. Definition of “Strip” renumbered.
- Section I. Definition of “Structural member” renumbered.
- Section I. Definition of “Structures per square millimeter” renumbered and “less” replaced by “fewer”.
- Section I. Definition of “Supervisor” renumbered.
- Section I. Definition of “Surfactant” renumbered.
- Section I. For the definition of “Temporary storage license”: renumbered; added “deemed”; replaced “to” with “by”; and removed “which” and replaced with “that”.

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- Section I. Definition of “Variance” added to clarify that a variance is written approval for alternative work practices at an asbestos project.
- Section I. For the definition of “Visible emissions”: renumbered; removed “which” and replaced with “that”; and removed “coming” and replaced with “that originate”.
- Section I. Definition of “Waste generator” renumbered.
- Section I. Definition of “Waste shipment record” renumbered.
- Section I. For the definition of “Wet cleaning”: renumbered; removed “eliminating” and replaced with “removing”; added comma “(,)” after mops; and removed “which” and replaced with “that”.
- Section I. For the definition of “Work area”: renumbered; added comma “(,)” after spaces; and removed “which” and replaced with “that”.
- Section I. For the definition of “Worker”: renumbered and removed “However, facility operation and maintenance workers are not required to work under a licensed supervisor.”
- Section I. Definition of “Working day” renumbered.
- Section II.A. Added colon “(:)”; and and/or after owner; removed “consultant” and “or” before “worker”; added “non-industrial facility owner and/or operator, or”; added “activity” after “demolition”; and removed “to” before any asbestos”.
- Section II.B. Unchanged.
- Section II.C & D. Replaced with new wording in the form of language from the 1996 EPA residential clarification document to specify when a residential structure is regulated for consistency with existing EPA requirements.
- Section III. Renamed as ASBESTOS LICENSE FEE SCHEDULE. Places license fee information in one location and clarifies fee schedule.
- Section III.A. Added language to identify acceptable methods of fee payment and that each separate building at a multi-building site shall be considered a separate asbestos project, and fees will be assessed for each.
- Section III.B. Formerly SECTION III.D. Moved, renamed, and revised to specify personnel license fees. No fee amount has been changed as a result of these revisions.
- Section III.C. Formerly SECTION IV.I. Moved, renamed, and revised to specify renovation project fees. No fee amount has been changed as a result of these revisions.
- Section III.D. Formerly SECTION XIII.G. Moved, renamed, and revised to specify demolition project fees. No fee amount has been changed as a result of these revisions.
- Section IV. Renamed as PERSONNEL LICENSING REQUIREMENTS. Clarifies personnel license requirements. No fee amount has been changed as a result

of these revisions.

- Section IV.A. Formerly SECTION III.A. Moved and revised to specify applicability of this section.
- Section IV.B. Formerly SECTION III.B.3. Moved, renamed and revised to specify training documentation requirements.
- Section IV.C. Formerly SECTION III.B. Moved and revised to specify license application requirements.
- Section IV.C.1.c. Revised the proposed language to add specific requirements for photo size.
- Section IV.C.2.g. Formerly SECTION III.B.2.a. Moved and revised to specify contractor license requirements.
- Section IV.C.2.h. Added language concerning Non-Industrial Facility Group Licenses.
- Section IV.D. Formerly SECTION III.C. Moved and revised to specify continuing education requirements. Also, Section III.D. of the former version of the regulation, which was moved to Section IV., has been stricken in its entirety.
- Section IV.E. Formerly SECTION III.E. Moved and revised to specify Department requirements of action on an application.
- Section IV.F. Formerly SECTION III.F. Moved and revised to specify requirements for Department denial of applications and licenses.
- Section IV.G. Formerly SECTION III.G. Moved to Section IV to specify the Department’s right to impose terms and conditions in granting licenses.
- Section IV.H. Formerly SECTION III.H. Moved and revised to specify license duration requirements.
- Section V. Renamed as ASBESTOS PROJECTS/GENERAL INFORMATION.
- Section V.A. Formerly SECTION IV.A. Moved and revised to specify applicability of this section.
- Section V.B. Formerly SECTION IV.B. Moved and revised to specify general requirements.
- Section V.B.3. Revised to address emergency licenses.
- Section V.B.5.e. Removed “by the air sampler”.
- Section V.C. Formerly SECTION IV.C. Moved and revised to specify other requirements at the project site.
- Section V.D. Formerly SECTION IV.D. Moved, renamed and revised to specify alternative work practices for any sized asbestos project.
- Section V.E. Formerly SECTION IV.E. Moved and revised to specify requirements for

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	emergency operation.
Section V.E.1	Revised the proposed language to more appropriately address the reporting of emergency operations after Department working hours.
Section VI.	Renamed as ASBESTOS BUILDING INSPECTION REQUIREMENTS.
Section VI.A.	Formerly SECTION IV.B.1. and IV.B.2. Moved and revised to specify the applicability of this section.
Section VI.B.	Formerly SECTION IV.B.3. Moved, renamed, and revised to specify asbestos inspection requirements.
Section VI.B.1.f.	Revised to include the use of MSDS under specific circumstances.
Section VI.C.	Added to specify asbestos inspection report contents requirements.
Section VI.D.	Added to specify sampling requirements for building inspectors.
Section VI.D.1.	Revised to exclude TSI and floor tile from the 3-5-7 sampling protocol.
Section VII.	Renamed as STANDARDS FOR AIR SAMPLERS.
Section VII.A.	Added to specify applicability of this section.
Section VII.B.	Formerly SECTION IV.F. Moved, renamed and revised to specify general requirements.
Section VII.C.	Formerly SECTION V.C.1. Moved, renamed and revised to specify background monitoring requirements.
Section VII.D.	Formerly SECTION V.C.2. Moved, renamed and revised to specify daily monitoring requirements.
Section VII.D.1.e.	Revised language to require sample volumes that are consistent with the analytical method that is applicable to the samples being collected.
Section VII.E.	Formerly SECTION IV.F.4. Moved, renamed and revised to specify clearance monitoring requirements.
Section VII.E.2.	Revised language to require sample volumes that are consistent with the analytical method that is applicable to the samples being collected.
Section VII.E.3 - 7.	Formerly found in SECTION V.C.3. Moved and revised to expound on clearance monitoring requirements.
Section VIII.	Renamed as DISPOSAL REQUIREMENTS. Clarifies disposal requirements for all sized abatement or demolition projects.
Section VIII.A.	Added to specify applicability of this section.
Section VIII.B.	Formerly SECTION IV.H. Moved, renamed and revised to specify general requirements.

Section VIII.C.	Added to specify temporary asbestos storage containment area site requirements.
Section IX.	Formerly SECTION IV.G. Renamed as EXEMPTION FROM WETTING FOR ANY SIZED PROJECT.
Section IX.A.	Renamed as General Provisions.
Section IX.B.	Renamed as Temperature Constraints.
Section X.	Renamed as NESHAP Projects.
Section X.A & B.	Formerly SECTIONS V.A. and V.B., respectively. Moved and revised to specify applicability of this section and notification/application requirements, respectively.
Section X.B.1.b.	Revised to clarify the percentage change in asbestos amount that would trigger updating/revising of notification/application and fees.
Section X.C.	Formerly SECTION V.D. Moved and revised to specify work practice requirements.
Section X.D.	Formerly SECTION V.C. Moved and revised to specify air sampling and analysis procedures.
Section XI.	SECTION XI. ROOFING PROJECTS removed in its entirety. Replaced and renamed as SECTION XI. SMALL PROJECTS.
Section XI.	Renamed as SMALL PROJECTS. Formerly known as SECTION VI. Moved and revised to specify requirements for small projects.
Section XI.B.3	Revised to clarify the percentage change in asbestos amount that would trigger updating/revising of notification/application and fees.
Section XII.	Renamed as MINOR PROJECTS. Formerly SECTION VII.
Section XII.A - D.	Formerly SECTIONS VII.A. through VII.D. Moved and revised to specify requirements for minor projects.
Section XIII.	Renamed as OPERATION AND MAINTENANCE ACTIVITIES. Formerly SECTION VIII. Moved and revised to specify operation and maintenance activity requirements.
Section XIV.	Renamed as GLOVEBAG TECHNIQUE. Formerly Section IX. Moved and revised to specify requirements for the use of glovebags and/or gloveboxes.
Section XIV.D - E.	Added to specify requirements for negative pressure glovebag and glovebox systems.
Section XV.	Renamed as NON-FRIABLE PROJECTS. Formerly SECTION XIV. Moved and revised to specify requirements for non-friable projects.
Section XVI.	Renamed as STANDARDS FOR DEMOLITIONS. Formerly SECTION XIII.

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	Moved and revised to specify requirements for demolitions.
Section XVI.E.3	Revised to specify which non-friable ACM products that may be left in place.
Section XVII.	Renamed as OUTDOOR PROJECTS. Formerly SECTION X. Moved and revised to specify requirements for outdoor projects.
Section XVIII.	Renamed as ENCAPSULATION AND ENCLOSURE. Formerly SECTION XII. Moved and revised to specify encapsulation and enclosure requirements.
Section XIX.	Renamed as REQUIREMENTS FOR TRAINING COURSES, INSTRUCTORS, AND TRAINING PROVIDERS. Formerly SECTION XV for paragraph B through J. Moved and revised to specify training and instructor requirements.
Section XIX.A.	Formerly SECTIONS III.B.2.i., III.A.6., III.A.7., III.B.2.i.(3), III.A.8., and III.A.9., respectively. Moved and revised to specify asbestos training course license requirements.
Section XIX.K.	Formerly SECTION III.D.7. Moved and revised to specify training course fee schedules.
Section XX.	Formerly SECTION XVI. Moved and revised to specify industrial manufacturing and electrical generating facilities requirements.
Section XXI.	Formerly SECTION XVII. Moved and revised with phrase “submission of fraudulent information or documentation” and to add in a comma “(,)” after “limited to”.
Section XXII.	Formerly SECTION XVIII. Moved and revised due to change in Department’s appeal process.
Section XXIII.	Formerly SECTION XIX. Moved and revised for clarification. Comma “(,)” added after ‘retain’, “after their issuance,” and “to the Department for review”. Removed “to the Department”.
Section XXIV.	Formerly SECTION XX. Moved and revised with minor grammatical correction (“which” removed and replaced with “that”).
Section XXV.	Formerly SECTION XXI. Moved and revised with only a numerical correction (“I” removed and replaced with “V”).

Instructions:

Due to the numerous and substantial revisions that have been made throughout the Regulation, replace R.61-86.1 in its entirety with this amendment.

Text:

(Statutory Authority: Sections 44-1-140; 48-1-30; 44-87-10 et seq.)

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SECTION I. DEFINITIONS.

1. "Abatement" - Procedures to control fiber release from regulated asbestos-containing materials. This includes removal, enclosure, encapsulation, repair, and any associated preparation, clean up and disposal activities having the potential to disturb regulated asbestos-containing material.
2. "Adequately wet" - To sufficiently mix or penetrate with liquid to prevent the potential release of particulates. The absence of visible emissions is not sufficient evidence of being adequately wet.
3. "Aggressive clearance sampling" - A method of sampling which uses electric fan(s), electric leaf blower(s), and other devices to simulate vigorous activity in the abated area while air samples are being collected.
4. "AHERA" - Regulations developed pursuant to the Asbestos Hazard Emergency Response Act, 40 CFR Part 763, Asbestos Containing Materials in Schools (October 30, 1987).
5. "AIHA" - American Industrial Hygiene Association.
6. "Airlock" - A chamber which permits entrance and exit with minimum air movement between a contaminated area and an uncontaminated area, consisting of two doorways protected by two overlapping polyethylene sheets and separated by a sufficient distance such that one passes through one doorway into the

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chamber, allowing the doorway sheeting to overlap and close off the opening before proceeding through the second doorway. The airlock maintains a pressure differential between the contaminated and uncontaminated areas, thereby minimizing flow-through contamination further.

7. "Air sampler - A person licensed by the Department to implement air-monitoring plans and analysis schemes during abatement.
8. "Air sampling" - A method such as NIOSH 7400 for PCM, the OSHA Reference Method, 40 CFR 763 Appendix A for TEM, or an equivalent method accepted by the Department used to determine the fiber content of a known volume of air during a specified period of time.
9. "Amended water" - Water to which a surfactant (for example, a non-sudsing detergent) has been added.
10. "Area air sampling" - Any form of air sampling whereby the sampling device is placed at a stationary location either inside or outside the regulated work area.
11. "Asbestos" - The asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite, and actinolite-tremolite.
12. "Asbestos abatement entity" - Any individual, partnership, firm, association, corporation, sole proprietorship or other business concern, as well as an employee or member of any governmental, religious, or social organization that is involved in asbestos abatement.
13. "Asbestos containing material (ACM)" - Material containing asbestos of any type, either alone or mixed with other materials, in an amount greater than one percent (1%) as determined by using the method specified in 40 CFR Part 763, Appendix A, Subpart F, Section 1, as amended, or an accepted equivalent. (NOTE: "Appendix A to Subpart F" has been redesignated as, and shall hereinafter be referred to as, "Appendix E to Subpart E" - 60 FR 31917, June 19, 1995.)
14. "Asbestos containing waste materials" - As applied to demolition and renovation operations, this term includes regulated asbestos-containing waste materials and materials contaminated with asbestos, including disposable equipment and clothing.
15. "Asbestos project" - Any activity associated with abatement including inspection, design, air monitoring, in-place management, encapsulation, enclosure, renovation, repair, removal, any disturbance of regulated asbestos containing materials (RACM), and demolition of a facility.
16. "Asbestos project design" - A written or graphic plan prepared by an accredited project designer specifying how an asbestos abatement project will be performed that includes, but is not limited to, scope of work and technical specifications.
17. "Asbestos training course" - A Department-approved initial or refresher course in any discipline listed herein (for example, workers, supervisors, management planners, etc.) that meets the requirements of this regulation and is acceptable for licensing purposes.
18. "Asbestos training course instructor" - A Department-approved individual who will teach work practice topics, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course and who meets the qualifications of this regulation.
19. "Asbestos training course provider" - The person, sole proprietorship, public corporation, or incorporated entity that meets the qualifications of this regulation to provide instruction in any of the work practice topics or disciplines, non-work practice topics, and/or hands-on topics in any Department-approved initial and/or refresher training course.

20. “ASHARA” - Regulations developed pursuant to 40 CFR Part 763, Subpart E, Appendix C Model Accreditation Plan, Asbestos School Hazard Abatement Reauthorization Act (November 28, 1992).
21. “Authorized visitor” - The facility owner/operator, or any representative of a regulatory or other agency having jurisdiction over the project. This is limited to government project inspectors, police, paramedics, fire-safety personnel, nuclear plant operators, and insurance loss prevention safety auditors, or other personnel as approved on a case-by-case basis by the Department.
22. “Background monitoring” - Area sampling performed prior to abatement to obtain an index of existing airborne fiber levels under typical activity.
23. “Building inspection” - An activity undertaken at a facility by a Department-licensed asbestos building inspector to determine the presence and location of regulated and non-regulated ACM, and to assess the condition of materials identified as ACM. This includes visual or physical examination and bulk sample collection.
24. “Building inspector” - A person licensed by the Department to examine a facility for the presence of ACM, to identify and assess the condition of the material, and to collect bulk samples.
25. “Category I nonfriable asbestos containing material (ACM)” - Nonfriable asbestos or nonfriable asbestos-containing packing, gaskets, and resilient floor covering; and asphalt roofing products containing greater than one percent (1%) asbestos as determined using the method specified in 40 CFR Part 763, Appendix E, Subpart E, or an accepted equivalent.
26. “Category II nonfriable ACM” - Any material that cannot, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations, excluding Category I nonfriable ACM and containing greater than one percent (1%) asbestos as determined using the methods specified in 40 CFR Part 763, Appendix E, Subpart E, or an accepted equivalent.
27. “Clean room” - An uncontaminated area or room that is part of the decontamination enclosure system and that has provisions for storage of street clothing and protective equipment.
28. “Clearance monitoring” - Area air sampling performed using Department accepted aggressive clearance sampling techniques to determine the airborne concentrations of residual fibers upon conclusion of asbestos abatement.
29. “Commercial labor provider” - Any individual, partnership, corporation, or other business concern that is not engaged in an asbestos project but does provide temporary workers or supervisors to the owner/operator of the project.
30. “Contractor” - Any individual, partnership, corporation or other business concern that performs asbestos abatement but is not a permanent employee of the facility owner.
31. “Control measure” - Use of amended water, negative pressure differential equipment, encapsulant, high efficiency particulate air filtration device, glove-bag or other state-of-the-art equipment designed to prevent fiber release into the air.
32. “Critical barrier” - At minimum, two independent layers of 6-mil plastic sheeting applied to any opening into a work area in a manner that creates a leak-tight seal within the work area to isolate vents, windows, doors, switches, outlets, and any other cavity or opening to the contaminated work area.
33. “Cut” - To penetrate with a sharp-edged instrument. This includes sawing, but may not include shearing, slicing, or punching.

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34. “Decontamination enclosure system” - An enclosed area adjacent and connected to the regulated work area consisting of an equipment room, shower area, and clean room, each separated by airlocks, that is used for the decontamination of employees, materials, and equipment that are contaminated with asbestos.
35. “Demolition” - Wrecking or taking out any load-supporting structural member of a facility together with any related handling operations, the burning of any facility, or moving of a structure.
36. “Department” - The South Carolina Department of Health and Environmental Control’s Asbestos Section.
37. “Electrical generating facility” - Any establishment primarily engaged in the generation, transmission and/or distribution of electrical energy for sale.
38. “Emergency operation” - A renovation or demolition operation that was not planned but results from a sudden, unexpected event that, if not immediately attended to, will present an imminent safety or public health hazard, will cause equipment damage, or will impose an unreasonable financial burden. This term specifically excludes routine equipment maintenance.
39. “Encapsulation” - A form of abatement involving the treatment of regulated asbestos-containing material (RACM) with a liquid that covers the surface with a protective coating (bridging) or embeds fibers in an adhesive matrix (penetrating) to prevent the release of asbestos fibers.
40. “Enclosure” - A form of abatement involving placement of a leak-tight, impermeable, permanent barrier to prevent access to regulated asbestos-containing material and to prevent the release of asbestos fibers.
41. “EPA” - United States Environmental Protection Agency.
42. “Equipment room” - A contaminated area or room that is part of the decontamination enclosure system and that has provisions for the storage of contaminated clothing and equipment.
43. “Examination date” - The date printed on the Departmental Asbestos Abatement License that indicates the date of successful completion of an examination administered upon completion of an asbestos training course.
44. “F/cc” - Fibers per cubic centimeter.
45. “Facility” - Any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any bridge; any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this requirement is included in this definition, regardless of its current use or function.
46. “Facility component” - Any part of a facility including equipment.
47. “Friable” - Refers to ACM, which may, when dry, be crumbled, pulverized, or reduced to powder by the forces expected to act upon it in the course of demolition or renovation operations. This also refers to previously non-friable ACM after such material becomes damaged to the extent that when dry, can be or has been crumbled, pulverized, or reduced to powder.
48. “Friable asbestos containing material” - Any material that, when dry, can be or has been crumbled, pulverized, or reduced to powder and contains greater than one percent (1%) asbestos as determined using the method specified in 40 CFR Part 763, Appendix E, Subpart E, as amended, or an accepted equivalent.

49. "Goose neck" - Process for sealing the outer bag by twisting the opening of the bag, folding twisted portion of bag over, and creating a loop. Adequately secure the opening of the bag to the base of the twist, using duct tape.
50. "Glovebag" - A sealed compartment with attached inner gloves used for the handling of asbestos-containing materials. Information on glovebag installation, equipment and supplies, and work practices is contained in the Occupational Safety and Health Administration's (OSHA's) final rules on occupational exposure to asbestos, 29 CFR 1926.1101 (August 10, 1994), as amended, and any subsequent amendments or editions.
51. "Grind" - To reduce to powder or small fragments. Grinding includes mechanical chipping or drilling.
52. "HEPA filter" - A high efficiency particulate air filter that will capture particles with an aerodynamic diameter of 0.3 micrometers with a minimum efficiency of 99.97 percent.
53. "Homogeneous area" - Area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture.
54. "HVAC" - Heating, ventilation, and air conditioning.
55. "Industrial manufacturing facility" - Any establishment whose Standard Industrial Classification code falls within Major Groups 20 through 39, excluding any office space that is part of such an establishment.
56. "In poor condition" - Refers to any ACM where the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.
57. "Installation" - Any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of a single owner or operator (or of owners or operators under common control).
58. "Issue date" - The date a license is issued by the Department.
59. "Leak-tight" - Dust, solids, or liquids cannot escape or spill out.
60. "License" - A document issued by the Department that allows an asbestos abatement contractor, building inspector, project designer, management planner, air sampler, supervisor, worker, or other to engage in asbestos projects.
61. "Long-term, in-house contractor" - A contractor having a long-term, often multi-year, contractual arrangement with an industrial manufacturing or electrical generating facility to provide construction and maintenance services, including asbestos abatement. The employees of a designated long-term, in-house contractor shall be covered under the group license of the assigned facility.
62. "Management planner" - A person licensed in accordance with the requirements of this regulation who interprets inspection reports, conducts hazard assessments of asbestos-containing materials, determines appropriate response actions, develops a schedule for implementing response actions, and prepares written management plans.
63. "Manometer" - Instrument for the measurement of gas pressure whose units are represented in inches of water column.

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64. "Minor project" - A project where 25 or fewer square or linear feet of regulated asbestos-containing material (RACM) are removed, or where 10 or fewer cubic feet of RACM off a facility component are cleaned up.
65. "Movable object" - A structure within the work area that can be moved (e.g., chair, desk, etc.).
66. "Negative pressure differential equipment" - A portable exhaust system equipped with a HEPA filter.
67. "NESHAP" - National Emission Standards for Hazardous Air Pollutants, 40 CFR 61, Subpart M, February 3, 1994, as amended, and any subsequent amendments or editions.
68. "NESHAP project" - An asbestos project which involves at least 160 square feet or 260 linear feet of regulated asbestos containing material (RACM), or 35 or more cubic feet of RACM off a facility component such that the area or length could not be measured prior to abatement. If several contemporaneous projects in the same area within the same building being performed by the same contractor are smaller than 160 square or 260 linear feet individually but add up to that amount, then the combination of the smaller projects shall be considered one NESHAP project.
69. "NIOSH" - National Institute for Occupational Safety and Health.
70. "Non-industrial facility"- Any public, private, institutional or governmental entity that does not meet the definition of an electrical generating or industrial manufacturing facility as defined in this regulation.
71. "Operation and maintenance (O&M) activity" - The disturbance of regulated asbestos-containing material only when required in the performance of an emergency or routine maintenance activity that is not intended solely as asbestos abatement. In no event shall the amount of ACM disturbed exceed that which can be contained in one glovebag or 6-mil polyethylene bag that shall not exceed 60 inches in length and width.
72. "O&M worker" - An individual licensed under a facility group license to perform an operation and maintenance activity at that facility.
73. "OSHA" - Occupational Safety and Health Administration.
74. "Owner/operator" - Any person or contractor who owns, leases, operates, controls, or supervises a facility being demolished or renovated, or any person who operates, controls, or supervises the demolition or renovation operation, or both.
75. "Owner's representative" - A licensed supervisor, management planner, project designer, or air sampler designated by the facility owner to manage the asbestos project, and who serves to ensure that abatement work is completed according to specification and in compliance with all relevant statutes and regulations.
76. "Personal air sampling" - A method used to obtain an index of an employee's exposure to airborne fibers. Samples are collected outside the respirator in the worker's breathing zone.
77. "Planned renovation operations" - A renovation operation, or a number of such operations, in which some RACM will be disturbed, removed, or stripped within a given period of time and that can be predicted. Individual non-scheduled operations are included if a number of such operations can be predicted to occur during a given period of time based on operating experience.
78. "Project designer" - A person licensed in accordance with the requirements of this regulation who is directly responsible for planning all phases of an asbestos abatement project design from project site preparation through complete disassembly of all abatement area barriers.

79. “Reciprocity” - A written agreement between another state and South Carolina to use the same or equivalent auditing criteria when evaluating training course materials, course presentations, and instructor qualifications.
80. “Regulated area” - An area established by the owner/operator of an asbestos project to demarcate areas where asbestos abatement activities are conducted; any adjoining area where debris and waste from such asbestos work is stored; and any work area within which airborne concentrations of asbestos exceed, or there is a reasonable possibility they may exceed, the permissible exposure limit.
81. “Regulated asbestos-containing material (RACM)” - (a) Friable asbestos-containing material; (b) Category I nonfriable ACM that has become friable; (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, drilling, or abrading; or (d) Category II nonfriable ACM that is likely to become or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations subject to this regulation.
82. “Removal” - Taking out RACM or facility components that contain or are covered with RACM from any facility.
83. “Renovation” - Altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.
84. “Repair” - Returning damaged asbestos-containing material to an undamaged condition or to an intact state so as to prevent fiber release.
85. “Resilient floor covering” - Asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing greater than one percent (1%) asbestos as determined using polarized light microscopy according to the method specified in 40 CFR Part 763, Appendix E, Subpart E, Polarized Light Microscopy, or an accepted equivalent.
86. “Shower room” - A room located between the clean room and the equipment room in the decontamination enclosure system containing a shower with hot and cold or warm running water controllable at the tap.
87. “Small project” - A project where more than 25 but fewer than 160 square feet or more than 25 but fewer than 260 linear feet of RACM are to be abated, or where more than 10 but fewer than 35 cubic feet of RACM off a facility component are to be cleaned up.
88. “Start date” - The date printed on the Departmental-issued asbestos abatement project license, which indicates when asbestos renovation or demolition operations, including any abatement activity having the potential to disturb RACM, will begin.
89. “Strip” - To remove RACM from any part of a facility or facility component.
90. “Structural member” - Any load-supporting member of a facility, such as beams and load-supporting walls; or any non-load-supporting member, such as ceilings and non-load-supporting walls.
91. “Structures per square millimeter” - Reporting measure for Transmission Electron Microscopy (TEM) Analysis. TEM clearance requires fewer than 70 structures per square millimeter (70s/mm²).
92. “Supervisor” - A person licensed by the Department and designated as the contractor’s representative to provide direct on-site supervision and guidance to workers engaged in abatement of RACM.

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93. "Surfactant" - A chemical wetting agent added to water to improve penetration, such as a non-sudsing detergent.
94. "Temporary storage license" - A license issued by the Department that authorizes storage of asbestos waste from small and minor projects at a secure location deemed acceptable by the Department.
95. "Variance" - Written Departmental approval for the use of alternative work practices at an asbestos project.
96. "Visible emissions" - Any emissions that are visually detectable without the aid of instruments that originate from RACM or asbestos-containing waste material or a regulated work area.
97. "Waste generator" - Any owner/operator of an asbestos project covered by this regulation whose act or process produces asbestos-containing waste material.
98. "Waste shipment record" - The shipping document, required to be originated, prepared, and signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material.
99. "Wet cleaning" - The process of removing asbestos contamination from facility surfaces and objects by using cloths, mops, or other cleaning tools that have been dampened with amended water.
100. "Work area" - Designated rooms, spaces, or areas in which asbestos abatement activities are to be undertaken, or that may be contaminated as a result of such abatement activities.
101. "Worker" - A person licensed by the Department to perform asbestos abatement under the direct guidance of an accredited and licensed supervisor.
102. "Working day" - Monday through Friday, including holidays that fall on any of the days Monday through Friday.

SECTION II. APPLICABILITY.

- A. The requirements of this regulation shall apply to: any owner/operator, building inspector, management planner, project designer, contractor, asbestos abatement entity, air sampler, commercial labor provider, supervisor, worker, non-industrial facility owner and/or operator, or demolition contractor involved in the inspection, in-place management, design, removal, encapsulation, enclosure, renovation, repair, demolition activity, or any other disturbance of RACM; and any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.
- B. There are no size limits for abatement projects involving RACM for which the applicable requirements of this regulation shall not apply unless otherwise specified.
- C. An owner/operator may request that the Department determine whether a project is an asbestos project subject to the requirements of this regulation.
- D. Asbestos projects occurring at a private residential structure of four units or fewer may be exempt from the requirements of this regulation unless:
1. Performed by a person or persons holding an asbestos abatement license.
 2. Performed as part of a larger commercial or public project, such as, but not limited to, highway construction; development of a shopping mall, industrial facility, other private development; or urban renewal, etc.

3. The project involves multiple structures within a compact area (“city block”) under the ownership and/or control of a single owner and/or operator. Examples would be a municipality clearing a block of houses for urban renewal purposes or SCDOT clearing a row of houses for a highway-right-of-way project.

4. The structure meets the definition of an installation.

5. The residential structure is being burned for fire training.

E. If asbestos projects occur at separate buildings (different school buildings, for example) then each separate building shall be considered a separate project.

SECTION III. ASBESTOS LICENSE FEE SCHEDULE.

A. Applicability.

1. The requirements of this Section shall apply to: any owner/operator, asbestos abatement entity, building inspector, management planner, project designer, contractor, asbestos abatement entity, air sampler, commercial labor provider, supervisor, worker, non-industrial facility owner and/or operator, demolition contractor involved in the inspection, in-place management, design, removal, renovation, encapsulation, enclosure, repair, clean-up, demolition activity, or any other disturbance of RACM; and any asbestos training course provider or asbestos training course instructor who conducts mandatory asbestos training courses.

2. Acceptable methods of payment shall be by check or money order made payable to SCDHEC, by credit card (VISA, MasterCard, or Discover), or cash.

3. Each separate building at a multi-building site shall be considered a separate asbestos project, and fees will be assessed for each.

B. Personnel Licensing Fees.

1. No application will be processed unless accompanied by the required fee.

2. Departmental receipt and deposit of fees submitted with an application shall in no way indicate approval of the application or guarantee the issuance of a license.

3. Fees shall not be refunded if a license application is denied per Section IV.F.

4. Fees for any duplicate original license shall be \$10.00.

5. Fee schedule: Individual license fees are assessed on a per person per discipline basis.

a. Contractor - \$100.00

b. Building Inspector - \$100.00

c. Air Sampler - \$100.00

d. Supervisor (Any type) - \$50.00

e. Worker (Any type) - \$10.00

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6. Facility Operation & Maintenance (O&M) Worker Group License Fee Schedule:

a. The minimum fee for an O&M Worker Group License is \$25.00 and the maximum is \$500.00.

b. Fee Schedule:

- (1) Up to 10 people - \$25.00 minimum fee
- (2) 11 to 20 people - \$2.50 per person
- (3) 21 to 50 people - \$5.00 per person
- (4) 51 to 90 people - \$7.50 per person
- (5) 91 or more persons - \$500.00 minimum fee

C. Renovation Project Fees.

1. The Department shall collect project license fees based on all RACM being removed and ACM rendered regulated by use of destructive removal techniques such as chipping, grinding, sawing, abrading, drilling, or extensive breaking.

2. Abatement project fees for regulated asbestos-containing materials (RACM) are calculated at 10 cents per linear, square, or cubic foot, with a minimum fee of \$25.00 and a maximum fee of \$1,000.00.

3. The Department shall not issue an abatement project license for a renovation or demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.

4. Fees shall not be refunded for projects for which the Department has issued an asbestos project license.

5. An abatement project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds.

D. Demolition Project Fees.

1. The Department shall charge a fee of \$50.00 to issue a project license for demolition projects.

2. A project license is required for every facility to be demolished, including any facility in which the required building survey indicates there is no ACM present.

3. The Department shall not issue a project license for a demolition until all requested information has been submitted and reviewed, and all applicable fees have been paid.

4. Fees shall not be refunded for projects for which the Department has issued a project license.

5. A project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds, and the licensee shall be subject to enforcement action for operation without a valid license.

SECTION IV. PERSONNEL LICENSING REQUIREMENTS.

A. Applicability.

1. No person or contractor shall engage in any asbestos project or abatement involving RACM, or ACM

rendered regulated by removal techniques or methods, unless licensed to do so by the Department.

2. Every contractor, supervisor, worker, air sampler, project designer, building inspector, or management planner who engages in any asbestos project shall have a current and valid license specific to the duties performed under the license.

3. When a person or contractor engaged in an asbestos project performs duties in more than one discipline, a separate license shall be obtained specific for each discipline. However, a management planner may perform the duties of a building inspector, and a supervisor may perform the duties of a worker without having to obtain separate licenses.

4. A license in any discipline shall only be utilized in accordance with the conditions and provisions contained in the license.

5. When an individual or a company for hire plans to remove RACM, a Department-issued asbestos contractor license must be obtained prior to performing abatement.

B. Training Documentation.

Acceptable documentation of training shall be:

1. An original certificate issued by a Department-approved training course provider and that meets the requirements specified in this regulation; or

2. A valid, original license or accreditation (photocopies or telephone facsimile transmissions shall not be accepted) issued by a state with which the Department has a reciprocal arrangement; or

3. A letter verifying successful completion of training, which includes the name, last four digits of Social Security number, unique certificate number, test score, and printed name and signature of the course instructor and which is sent directly to the Department from the training provider.

C. License Application.

1. Each applicant seeking an asbestos personnel license in any discipline shall:

a. Successfully complete a Department-approved initial training course specific to the discipline and, at the conclusion of the course, pass an examination with a score of 70 percent or above;

b. Submit a completed application to the Department in a format designated by the Department;

c. Submit a color passport style photo or have a photo taken by the Department. Digital photos should be at least one mega pixel in resolution. Still photos should be a minimum of 2" x 2" and a maximum of 3" x 5".

2. The application must state the type of license for which the application is being made and must include all of the following information:

a. Supervisor License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial asbestos abatement five-day supervisor

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training course and all subsequent eight-hour refresher training courses, if applicable.

b. AHERA Worker License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial asbestos abatement four-day worker training course and all subsequent eight-hour refresher training courses, if applicable.

c. Air Sampler License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation;

(2) Documentation of successful completion of an initial asbestos abatement five-day_supervisor training course; and

(3) Documentation of successful completion of NIOSH 582 course or equivalent, or documentation that the applicant is a Certified Industrial Hygienist.

d. Project Designer License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos abatement project designer training course and all subsequent eight-hour refresher training courses.

e. Building Inspector License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos building inspector training course and all subsequent four-hour refresher training courses, if applicable.

f. Management Planner License:

(1) Applicant's name, Social Security number, mailing address, telephone number, and, when applicable, company affiliation; and

(2) Documentation of successful completion of an initial three-day asbestos building inspector training course and all subsequent four-hour refresher training courses, if applicable; and

(3) Documentation of successful completion of an initial two-day asbestos management planners' training course and all subsequent four-hour refresher training courses, if applicable.

g. Contractor's License:

(1) Company name, mailing address, street address, telephone number, name, and title of a responsible company official, registered agent with the South Carolina Secretary of State's office, and the Federal Employer Identification Number (FEIN); and

(2) The name and license number of a company employee who is currently licensed as a supervisor in affiliation with that company pursuant to this regulation, or an application completed as required herein for a supervisor's license for a company employee.

h. Non-Industrial Facility O&M Group License (this license is facility-affiliated only):

(1) The facility representative shall, on company letterhead, submit the name, Social Security number, and type of training received for each individual to be covered under the facility license; and

(2) Documentation shall be submitted in the form of an original initial and/or refresher asbestos training certificate that is discipline-specific for the duties to be performed by each individual covered under the facility license.

D. Continuing Education.

1. After successful completion of an approved initial training course, an applicant seeking a license in any discipline except that of Contractor shall thereafter successfully complete a Department-approved initial or refresher training course specific to the discipline and, at the conclusion of each course, shall pass an examination with a score of 70 percent or above.

2. If more than 12 months but fewer than 24 months have elapsed since completing an initial or refresher training course, an applicant shall successfully complete either a refresher training course or an initial training course.

3. If more than 24 months have elapsed since successfully completing an initial or refresher training course, an applicant shall complete an initial training course.

4. The Department may require additional initial or refresher training specific to the requirements of this regulation or to air sampling strategies.

E. Action on an Application.

1. Within 15 calendar days after receiving an application, the Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 30 calendar days after receiving a completed application, including all additional information requested, the Department will issue a license or deny the application.

2. The Department reserves the right to request documentation to verify an applicant's previous training or accreditation in any discipline prior to issuing a license.

3. The Department reserves the right to request documentation, including Social Security numbers, to verify an applicant's identity prior to issuing a license.

F. Denial.

1. The Department shall deny an application if it determines that the applicant has not demonstrated the ability to comply with applicable requirements, procedures, and standards established by:

a. The Department as per South Carolina Regulation 61-86.1;

b. Chapter 87 of the 1976 South Carolina Code of Laws, as amended;

c. The U. S. Environmental Protection Agency as per:

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(1) National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions; and

(2) Asbestos-Containing Materials in Schools, 40 CFR Part 763, Subpart E, as amended, and any subsequent amendments and editions; and

d. Occupational Safety and Health Administration in 29 CFR Part 1926.1101 and 1910.1001, as amended, and any subsequent amendments and editions.

2. The Department shall deny a license to any applicant who has failed to comply with the requirements of a properly issued consent, administrative, or judicial order initiated by the Department.

3. The Department shall deny a license to any applicant if it determines that any information or documentation, including a Social Security number, required by this regulation is fraudulent or has been altered or falsified.

4. The Department shall deny a license to any applicant who fails to remit applicable fees.

5. The Department shall deny a license to any applicant who submits fraudulent or falsified information or documents.

6. The Department will not return fees submitted with any invalid or falsified training and/or identification documents submitted for the purposes of licensing.

7. The Department shall send notification of the denial of an application by certified mail, unless the individual is present when the application is evaluated, in which case the Department will inform the applicant in person of the denial.

8. Reapplication after denial. An application denied per this Section shall be resubmitted as follows:

a. For failure to comply with the requirements of a properly issued consent, administrative, or judicial order initiated by the Department, the application shall not be considered until the applicant complies with said order.

b. For altered or falsified documents, including but not limited to, training certificates, Social Security cards or numbers, and photo IDs, the application shall not be considered by the Department prior to 180 days after receipt of such documents and will only be considered thereafter with proper proof of the applicant having successfully completed an initial course in the discipline in which licensure is sought.

c. For failure to remit applicable fees, the application shall not be considered until all applicable_fees have been received.

9. The applicant may request a hearing pursuant to the provisions of this regulation.

G. Conditions and Generic Alternatives.

In granting a license, the Department may impose reasonable terms and conditions to ensure continuous compliance with the requirements of this regulation.

H. Duration of Licenses.

1. A license shall automatically become invalid if an instrument of payment is returned for insufficient funds.

2. A Contractor's license shall expire one year from the issue date, unless the Department suspends or revokes the license at an earlier date. A Contractor's license shall be considered invalid unless at least one company employee maintains a current, company-affiliated supervisor's license pursuant to this regulation.

3. All other licenses shall expire one year from the examination date printed on the license, which is based on the most recent acceptable training certificate submitted with the application, unless the Department suspends or revokes the license at an earlier date.

4. No license shall be extended beyond its expiration date.

SECTION V. ASBESTOS PROJECTS/GENERAL INFORMATION.

A. Applicability.

The requirements of this Section shall apply to the owner/operator, building inspector, management planner, project designer, air sampler, supervisor, worker, non-industrial facility owner/operator, or demolition contractor of any asbestos project involving the disturbance of RACM or ACM.

B. General Requirements.

1. A person licensed as an asbestos project designer shall prepare the written design for each abatement renovation project involving the removal of greater than 3,000 square, 1,500 linear or 656 cubic feet of RACM in a facility. However, all projects must be designed in accordance with 40 CFR 763.90(g) (*Federal Register*, Volume 52, Number 210, Friday, October 30, 1987), as amended, and any subsequent amendments and editions, and this regulation.

2. The asbestos project design must address:

- a. Preparation of each asbestos-related work area;
- b. Establishment of each containment;
- c. Establishment of each decontamination unit and procedures for use;
- d. Evaluation and selection of various fiber release control options;
- e. Establishment, maintenance, and monitoring of negative air pressure within each containment;
- f. RACM enclosure, removal, encapsulation, or repair work practices;
- g. Visual inspection procedures for each asbestos abatement containment area;
- h. Clean-up and final clearance procedures;
- i. Air monitoring, including analysis, documentation, and any other required record keeping;
- j. Respiratory protection and personal protective equipment requirements;
- k. Procedures for on-site storage, handling, and disposal of ACM and project waste; and
- l. Procedures for maintaining personnel licenses and training certificates on-site.

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3. An owner/operator shall obtain an asbestos project license from the Department prior to beginning any NESHAP, small, minor, or demolition asbestos project subject to this regulation unless reporting quarterly as specified herein or in the case of an emergency removal.

4. When air monitoring is required by this regulation, the facility owner shall utilize a person licensed as an air sampler and ensure that all air monitoring is performed.

5. When any negative pressure enclosure or contained work area is required for any sized asbestos abatement project or demolition project, the following requirements shall apply:

a. There shall be sufficient negative pressure differential equipment to ensure at least four air changes per hour;

b. A minimum of -0.02 column inches of water pressure differential, relative to outside pressure, shall be maintained as verified and recorded by a manometer;

c. The manometer record of daily readings (to be taken four times during every eight-hour work shift by a licensed air sampler independent from the contractor) verifying the negative pressure shall be maintained at the job site for Department review for the duration of the project;

d. The inlet sensor of the manometer shall be located at the farthest point from any source of make-up air;

e. The manometer must be calibrated prior to the start of each work shift;

f. Negative pressure shall be maintained until final clearance has been achieved; and

g. Air movement shall be directed away from employees performing asbestos work within the enclosure/containment and toward a HEPA filtration or other collection device.

6. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible, but not later than, the following working day when a project has been canceled.

7. The disposal requirements of this regulation shall be applicable to all asbestos-containing and asbestos-contaminated materials for any abatement activity.

8. The owner/operator shall ensure that contaminated water is filtered through a five-micron or smaller filter and discharged to a sanitary sewer system. No contaminated or filtered water shall be allowed to leak or drain outside of the work area.

C. Other Requirements at the Project Sites.

1. Every asbestos abatement entity performing abatement work shall have at the project site a legible, clear copy of a valid current initial or refresher training certificate issued by an approved training provider.

2. Every asbestos abatement entity performing abatement work shall have a clear, legible copy of a valid Department-issued personnel license at the project site.

3. For the duration of an abatement project, the asbestos owner/operator shall ensure that:

a. Each worker and supervisor employed at the abatement project site meets the applicable training and licensing requirements of this regulation.

b. At all times while abatement (including preparation, removal, and cleanup) of RACM is being performed at NESHAP and small projects, at least one licensed supervisor remains inside of each contained work area supervising the work. During abatement at regulated roofing projects, the supervisor shall be in the immediate work area supervising the work.

c. A means is available at all times during abatement at NESHAP and small abatement projects for Department inspectors or other authorized visitors to communicate with persons within the immediate contained work area in order to gain access.

d. For the duration of the asbestos project, a daily log containing the name and signature of every individual entering the negative pressure enclosure/regulated area shall be maintained on site.

e. The contained work area is secured at all times to prevent access of unauthorized visitors or unprotected persons.

f. Legible copies of Department letters of approval for alternative work practices are at the project site and available for inspection for the duration of abatement.

4. The contractor shall not proceed with abatement unless the air sampler fulfills all specified air monitoring requirements.

5. Commercial labor providers shall ensure that each worker or supervisor has completed appropriate training as specified in this regulation.

D. Alternative Work Practices for Any Sized Asbestos Project.

1. The Department may, on a case-by-case basis, approve and issue a variance for an alternative procedure for control of emissions from an asbestos abatement project, provided the owner/operator submits a written description of the alternative procedure to the Department prior to beginning work and demonstrates to the satisfaction of the Department that compliance with the prescribed procedures will not be practical or feasible, and that the proposed alternative procedures provide equivalent protection from asbestos exposure.

2. The owner/operator shall keep a copy of the Department's written approval at the work site and make it available for review by Department personnel upon request.

E. Emergency Operation.

1. For an emergency operation, the owner/operator must notify the Department by telephone (outside of normal business hours, an electronically recorded verbal notification is acceptable for approval to execute the emergency operation) and must submit a project notification/application as early as possible before, but not later than, the working day following the emergency operation. The notification/application may be transmitted via facsimile.

2. The facility owner shall notify the Department in writing of the date and hour that the emergency occurred; a description of the sudden, unexpected event; and an explanation of how the event caused an unsafe condition, public safety or health threat, equipment damage or would impose an unreasonable financial burden. The owner shall submit this information with the project notification/application.

SECTION VI. ASBESTOS BUILDING INSPECTION REQUIREMENTS.

A. Applicability.

1. Prior to beginning a renovation or demolition operation at any facility, the facility owner and/or owner's

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representative shall ensure that an asbestos building inspection is performed to identify the presence of ACM.

2. The asbestos building inspection shall include the facility or part of the facility affected by the renovation or demolition operation.

3. The facility owner and/or owner's representative shall ensure the asbestos building inspection is completed by a person licensed as an asbestos building inspector or management planner.

4. When materials that will be disturbed by the renovation or demolition operation are assumed to be asbestos without the use of laboratory bulk sample results, the provisions of Section VI.A.3 of this regulation does not apply.

5. In a multi-unit building, each separate room in each part of the building or areas affected by the renovation or demolition operation shall be inspected to confirm and quantify ACM homogeneous areas for sampling purposes.

6. To be acceptable, a building inspection shall have been performed no earlier than three years prior to the renovation or demolition, or, if more than three years have elapsed since the most recent inspection, the previous inspection shall be confirmed and verified by a person licensed as a building inspector.

7. The Department will not accept an asbestos building inspection or written report for any structure from an employee of an abatement company also involved in the removal of asbestos-containing materials from that structure, unless the licensed inspector is an employee of an entity regulated under Section XX of this regulation.

8. An asbestos building inspector shall not participate in the analysis of the bulk samples he or she has collected.

B. Asbestos Inspection.

The building inspector or management planner shall:

1. Visually inspect the areas that may be affected by the renovation or demolition operation to identify the locations of all suspected ACM. For a pre-demolition inspection, destructive sampling techniques shall be utilized;

2. Touch all suspected ACM to determine condition, friability, and whether ACM is a regulated material in areas that may be affected by the renovation or demolition operation;

3. Identify all homogeneous areas of suspected ACM in areas that may be affected by the renovation or demolition operation;

4. In areas that may be affected by the renovation or demolition operation, assume that some or all of the homogeneous areas are ACM, and/or for each homogeneous area that is not assumed to be ACM, collect and submit bulk samples for analysis in compliance with this Section;

5. Material Safety Data Sheets (MSDS), statements from the manufacturer, and architecture signoff will not be accepted as proof that a building product contains no asbestos, except in cases where the owner can verify the direct correlation of the building product to the MSDS, statements from the manufacturer, and/or architecture signoff documents. The Department reserves the right to reject documentation that it deems unacceptable.

C. Asbestos Inspection Report Contents.

1. Prior to each demolition operation and upon request for renovations, the Department shall be provided with a complete, legible copy of the asbestos building inspection report.

2. The inspection report shall include:

a. A title page denoting:

(1) The client's name, company, address, and telephone number, and the name and exact location of the facility inspected;

(2) The date the inspection was performed;

(3) The date the inspection report was written; and

(4) The printed name and telephone number of the inspector(s), and his or her affiliated company name, address, and telephone number.

b. A cover letter to the building owner or owner's representative that describes the purpose of the inspection; a general synopsis of the inspection and results; and the name, title, and signature of the inspector(s) and report writer, if different.

c. A detailed narrative of the physical description of the building or part of the building affected by the renovation or demolition operation that includes:

(1) The square footage of the building or part of the building affected by the renovation or demolition operation;

(2) The building materials used in the construction of the exterior, roof, interior, and basement or crawlspace of the building affected by the demolition or affected by the renovation materials operation; and

(3) An estimated or exact quantity (square or linear feet) for all suspect materials whether sampled for or assumed to be asbestos that may be affected by the renovation or demolition operation;

(4) Also include a description of non-suspect materials excluding: glass, metals, kiln brick, cement, fiberglass, concrete, pressed wood, cinder block, and rubber.

d. An executive summary that details:

(1) The type of suspect ACM (e.g., TSI, floor tile, mastic), total square or linear footage, and the total number of samples collected for each separate homogenous area affected by the renovation or demolition operation;

(2) The date of the inspection, type, condition, quantity, sample results, and exact location of ACM positively identified or assumed to be ACM in the part of the building affected by the renovation or demolition operation; and

(3) A list of the homogeneous areas identified are:

(a) Surfacing material that includes, but is not limited to, joint compound; plaster; and painted, troweled on, or spray-applied textured material;

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(b) Thermal system insulation (TSI) that includes, but is not limited to, pipe and boiler insulation;
or

(c) Miscellaneous material that includes, but is not limited to, flooring, roofing, mastics, gaskets, cementitious materials, caulking, ceiling tiles, fire doors, wall boards, and flexible duct connections;

(4) Whether the material is accessible for the building or part of the building affected by the renovation or demolition operation; and

(5) The material's potential for disturbance for the building or part of the building affected by the renovation or demolition operation.

e. For renovation and demolition operations, the inspector's determination that ACM is friable or non-friable.

f. Except when suspect ACM materials are assumed to be asbestos, include a complete, clear, legible copy of all laboratory bulk sample results.

g. Clear, legible drawings and/or photographs to clarify the scope of the renovation or demolition operation. Illustrate the exact location of each sample collected. For facilities that involve a trade secret or confidential component or an affected area process, a request for a variance may be submitted.

h. The printed name and signature of each accredited inspector who collected the samples, and a clear legible copy of his or her Department issued asbestos building inspector or management planner license.

D. Sampling.

1. A licensed asbestos inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing that is not assumed to be ACM, and shall collect the samples as follows:

a. At least three bulk samples shall be collected from each homogeneous area that is 1,000 or fewer square feet (sf) or linear feet (Lf) in size.

b. At least five bulk samples shall be collected from each homogeneous area that is greater than 1,000 but fewer than or equal to 5,000 sf or Lf.

c. At least seven bulk samples shall be collected from each homogeneous area that is greater than 5,000 sf or Lf.

2. A licensed asbestos inspector shall collect, in a statistically random manner, at least three bulk samples from each homogeneous area of TSI and any miscellaneous material that is not assumed to be ACM. In accordance with ASTM E2356, and any subsequent amendments and editions, negative results for non-friable organically bound materials such as flooring and roofing shall be verified with at least one TEM analysis.

3. Each owner/operator shall have all bulk samples collected per this regulation analyzed for asbestos using laboratories accredited by the National Institute of Standards and Technology (NIST), National Voluntary Laboratory Accreditation Program (NVLAP), or an equivalent standard as approved by the Department.

4. Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the "Interim Method for the Determination of Asbestos in Bulk Insulation Samples" found in Appendix E to subpart E of 40 CFR 763, the "Method for the Determination of Asbestos in Bulk Building Materials"

(EPA/600/R-93/116), ASTM E2356, or other method(s) deemed acceptable by the Department on a case-by-case basis.

5. A homogeneous area is not considered to contain ACM only if the results of all samples required to be collected from the area show asbestos in amounts of one percent (1%) or less.

6. A homogeneous area shall be determined to contain ACM based on a finding that the results of at least one sample collected from that area shows that asbestos is present in an amount greater than one percent (1%).

SECTION VII. STANDARDS FOR AIR SAMPLERS.

A. Applicability.

This Section shall apply to each owner, owner's representative and/or air sampler engaged in an asbestos project where air sampling is required.

B. General Requirements.

1. Area air sampling shall be performed by a licensed air sampler.
2. Abatement air sampling data collected by a licensed air sampler under contract with or employed by the asbestos contractor performing the abatement will not be acceptable to the Department.
3. Air sampling shall be conducted using collection media, procedures, and analytical methods in accordance with NIOSH Method 7400 when Phase Contrast Microscopy (PCM) is used, and with *Electron Microscope Measurement of Airborne Asbestos Concentrations* [EPA Report 600/2-77-178 (1978) and EPA Contract No. 68-02-3266 (1984)] when Transmission Electron Microscopy (TEM) is used.
4. Any alternative procedure for clearance sampling shall require prior written approval from the Department. The written request must provide a detailed description of the alternative procedure and an explanation of how it will provide an equivalent level of protection to facility occupants.
5. The air sampler shall:
 - a. Ensure that all air sampling pumps are accurately calibrated prior to operation by utilizing a rotometer that has been calibrated within the past six months using a primary standard, such as a bubble burette or a dry calibrator. Calibration data shall be maintained at the project site for the duration of abatement.
 - b. Ensure that all air sampling pumps are operating properly and that the filtered sampling cassettes are securely attached to the pumps for the duration of sampling.
 - c. Maintain current background, daily, and clearance air monitoring data at the project site, and make the data available for review by Department personnel and other authorized visitors upon request.
 - d. Ensure that there are always at least four sampling pumps operating properly for the duration of any asbestos project requiring daily area air monitoring.
 - e. Collect area air samples for a minimum of two and one half hours for each four-hour work period during preparation, removal, and clean-up activities at NESHAP projects.
 - f. Maintain a log for the duration of an asbestos project describing daily activities.
 - g. Follow the procedures specified in NIOSH 7400 or an equivalent method acceptable to the Department when conducting clearance air monitoring.

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h. Submit a written copy of the sampling procedures and clearance air monitoring results to the facility owner within five working days following the completion of the project and to the Department upon request.

C. Background Monitoring.

1. The air sampler shall collect a minimum of five air samples at a NESHAP abatement project prior to the start of abatement activities in order to obtain an index of background airborne fiber concentrations.

2. Samples shall be taken both inside and outside the work area to establish existing ambient air levels under normal activity conditions.

3. The air sampler shall document any variations and justifications for the variations, and shall maintain a written copy of the sampling variation(s) at the project site for the duration of the abatement, and shall provide the information to the Department upon request.

4. No background air sampling is required at small, minor, and O&M abatement projects.

5. Background sampling, when required, may be analyzed using PCM methods.

D. Daily Monitoring.

1. Once abatement activities begin at a NESHAP abatement project, the air sampler shall conduct representative daily area sampling in the following areas:

a. In the equipment room of the decontamination enclosure systems;

b. At the entrance to the clean room of each decontamination enclosure system;

c. Outside the work area in uncontaminated areas of the facility;

d. Where the negative pressure differential equipment exhausts, at a distance no greater than five to eight feet from the air flow when feasible. When multiple machines are in operation, the air sampler may rotate the sampling; however, all exhausts must be monitored daily; and

e. The total volume of air collected for daily area air sampling shall be in accordance with 40 CFR Part 763 and/or NIOSH 7400 and any subsequent revisions for analytical methodology.

2. The air sampler shall document any variations and justifications for the variations, and shall maintain a written copy of the sampling variation at the project site for the duration of the abatement and provide the information to the Department upon request.

3. Daily air sampling, when required, may be analyzed using PCM methods.

E. Clearance Monitoring.

1. Where clearance air monitoring is required by this regulation, the clearance standard for any NESHAP abatement project shall be: by Phase Contrast Microscopy less than or equal to 0.01 f/cc; or by Transmission Electron Microscopy (TEM). The clearance standard is less than or equal to 70 s/mm² using the Mandatory TEM Method described in 40 CFR 763, Appendix A of Subpart E, as amended, and any subsequent amendments and editions. The Z test with a value of Z less than or equal to 1.65 for a Z test carried out as described in 40 CFR 763, Appendix A of Subpart E, as amended, and any subsequent amendments and editions, shall be allowed for clearance purposes only with prior Department approval.

2. The total volume of air collected for clearance air sampling shall be in accordance with 40 CFR Part 763 and/or NIOSH 7400 and any subsequent revisions for analytical methodology.
3. A licensed air sampler shall conduct, at a minimum, PCM clearance air monitoring at the completion of each NESHAP project. Projects exceeding the project design threshold (3,000 sf, 1,500 Lf, and 656 cubic feet of RACM) will require TEM clearance air monitoring.
4. When conducting clearance air monitoring, the air sampler shall follow the procedures specified in *Measuring Airborne Asbestos Following An Abatement Action*, EPA Report 600/4-85-049 (1985), which is hereby incorporated by reference, or an equivalent method acceptable to the Department. Procedures shall be summarized and submitted to the facility owner. The air sampler shall report the clearance air monitoring results in writing to the facility owner within five working days following completion of the project and to the Department upon request.
5. Sampling shall not begin until wet cleaning has been completed and no visible pools of water or condensation remain. Sufficient time shall be allowed for all surfaces to dry. The sampling zone shall be representative of the building occupants' breathing zone.
6. Sampling shall not begin until the air sampler has performed a visual inspection and authorizes final clearance air monitoring.
7. Sampling shall be conducted only after all interior wall, ceiling, and floor polyethylene sheeting has been removed. Critical barriers and the five-stage decontamination enclosure system shall remain in place until the abated area has passed final clearance.
8. For projects subject to 40 CFR Part 763, AHERA, as amended, and any subsequent amendments or editions, conduct clearance air monitoring after abatement in areas to be reoccupied (including interior spaces, porticos, and covered exterior walkways) and abatement on exterior portions of mechanical systems used to condition interior spaces. For projects equal to or greater than 160 sf, 260 Lf or 35 cubic feet, TEM clearance air monitoring is required.
9. At least one licensed asbestos project supervisor shall remain at an asbestos project site for the duration of the final clearance visual inspection and clearance air sample collection process.

SECTION VIII. DISPOSAL REQUIREMENTS.

A. Applicability.

This Section shall apply to each owner/operator engaged in a renovation abatement project.

B. General Requirements.

1. Each owner/operator engaged in a renovation abatement project subject to this Section shall ensure that:
 - a. Each container (bag, drum, wrapped component, etc.) is labeled so that labels have the appearance of or are designed in accordance with OSHA 29 CFR 1926.1101 (August 10, 1994), as amended, and any subsequent amendments and editions, and EPA 40 CFR 61.150 (November 20, 1990), as amended, and any subsequent amendments and editions.
 - b. All asbestos waste bags and/or containers shall be properly labeled prior to being placed into the waste transport vehicle.
 - c. Waste generator labels are:

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(1) Written legibly and in indelible ink; and

(2) Displayed in a prominent location on the outer most bag or container.

d. Asbestos waste is disposed of at a landfill approved or permitted to accept asbestos waste.

e. Asbestos waste is not stored at a location other than the facility site without prior written approval from the Department.

f. Stored asbestos waste is maintained in a secured, locked location where access is controlled.

g. Asbestos waste is transported and disposed of in a manner that will not permit the release of asbestos fibers into the air (e.g., enclosed or retrofitted covered vehicle).

h. Asbestos waste is transported in accordance with the following procedures:

(1) The cargo area of the transport vehicle shall be free of debris and be lined with at least one layer of 6-mil polyethylene sheeting.

(a) Floor sheeting shall be installed first and shall extend up the side walls at least 12 inches and shall be taped securely into place.

(b) Wall sheeting shall overlap by at least six inches and be taped into place.

(c) Ceiling sheeting shall extend down the sides of the walls at least six inches and be taped into place.

(2) If asbestos waste is transported exclusively in leak-tight clean drums, or other leak-tight, rigid containers approved by the US Department of Transportation as appropriate shipping containers for asbestos waste, then polyethylene sheeting is not required.

(3) Drums, bags, wrapped components, and other leak-tight containers that have been removed from the work area shall be labeled in accordance with 1.a. of this Section prior to being loaded into an appropriate vehicle for transportation.

(4) Any debris or residue observed on containers or surfaces outside of the work area resulting from abatement activities shall immediately be cleaned using wet methods and a vacuum equipped with a HEPA filter.

(5) Containers shall be carefully placed, not thrown, into the truck cargo area. Drums shall be placed on a level surface in the cargo area and packed tightly or blocked and braced to prevent shifting and tipping. Large structural components shall be secured to prevent shifting.

(6) Asbestos waste that is removed from a facility site shall be transported directly to an approved landfill unless it is stored in the location designated in a temporary storage license issued to the owner/operator by the Department.

(7) Metal dumpsters or containers in which asbestos waste is temporarily stored at the abatement site shall be lined with 6-mil polyethylene sheeting to prevent contamination and shall have doors or tops. The doors and tops shall be closed and locked except during loading or unloading of asbestos waste.

(8) Metal dumpsters or containers used for waste storage shall be labeled in accordance with OSHA 29 CFR 1926.1101, August 10, 1994, as amended, and any subsequent amendments and editions.

(9) Bags shall be free of splits, rips, and tears, and shall be carefully placed, not thrown, into the transport vehicle.

(10) Any equipment, materials, or supplies stored in the waste transport vehicle shall be isolated from the asbestos waste by a leak-tight barrier. All containers and wrappings shall be free of asbestos contamination.

(11) Non-asbestos waste shall not be placed in waste containers or bags labeled as asbestos waste.

(12) The vehicle used to transport asbestos wastes shall be labeled in accordance with 40 CFR 61.149(d)(1)(i), (ii), and (iii), as amended, and any subsequent amendments and editions.

2. The owner/operator shall dispose of asbestos waste in accordance with the following procedures:

a. Upon reaching the landfill, vehicles shall approach the dump location as closely as possible to unload asbestos waste.

b. Bags, drums, and wrapped components shall be inspected when unloaded at the disposal site. Material in damaged containers shall be rewrapped or repacked in empty drums or bags.

c. Waste containers shall be placed on the ground at the disposal site, not dropped or thrown out.

d. Unloading of metal dumpsters or containers by tipping or tilting is permitted without re-inspecting individual bags or drums, provided there are no visible emissions.

e. Following the removal of all containerized waste, polyethylene sheeting shall be removed and discarded in bags or drums along with contaminated cleaning materials and protective clothing.

f. After asbestos waste has been unloaded, the truck cargo area, including the floor, walls, and ceiling, shall be decontaminated using wet methods or a vacuum equipped with a HEPA filter until no visible residues remain.

g. A copy of a completed waste shipment record with signature of the landfill operator shall be submitted to the Department by the asbestos contractor within 45 working days of completion of removal.

h. A waste shipment record shall be used and shall include the asbestos project license number; names of the facility owner, contractor and disposal site; the estimated quantity of asbestos waste; and the type and number of containers used. Each time the material changes custody, the record shall be signed by the person(s) receiving the waste. If a separate hauler is used, the hauler's name, address, telephone number, and the driver's signature shall also appear on the record.

i. The owner/operator shall ensure that asbestos-containing or asbestos-contaminated waste materials are not burned or recycled.

j. Commercial rental vehicles shall not be used to transport any asbestos, asbestos-containing, or asbestos-contaminated waste. This prohibition does not apply to tractors but does apply to cargo compartment areas used to store and/or transport asbestos waste. Rental vehicles do not include leased vehicles.

C. Temporary Asbestos Storage Containment Area Site.

1. Prior written approval must be obtained from the Department before a site other than an asbestos abatement project site can be used for the storage of regulated asbestos-containing waste from small, minor, or O&M asbestos projects. NESHAP asbestos project waste must be deposited into an approved landfill and may

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not be stored.

2. Written authorization shall also be obtained from the facility owner or his representative prior to transporting regulated asbestos-containing waste from the facility site of generation (verification of the property owner's authorization must be sent directly to the Department by the facility owner).

3. In order to have a site permitted as a Temporary Asbestos Storage Containment Area, the operator must demonstrate that adequate precautions have been and will continue to be taken to ensure that the waste is properly maintained for the duration of its storage.

4. An operator must submit an application requesting a license for a Temporary Asbestos Storage Containment Area to the Department for review at least 45 working days in advance. The Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application.

5. Within 45 working days after receiving a completed application, including additional information requested, the Department will issue a license or deny issuance of the license.

6. The Department reserves the right to inspect the proposed Temporary Asbestos Storage Containment Area prior to granting final approval.

7. Approval of the Temporary Asbestos Storage Containment Area will be valid for one year from the date of issuance unless the authorization is revoked or suspended by the Department at an earlier date.

8. The Department may revoke or suspend a license based on falsification of or known omission of information from an application for this license, omission or improper use of work practices, improper disposal of ACM, and/or spread of asbestos waste beyond the containment area.

9. In order to renew a storage license, the operator of a Temporary Asbestos Storage Containment Area must resubmit an application for off-site storage of regulated asbestos-containing waste to the Department at least 45 working days prior to the expiration of the existing permit. Previous approval of a site as a Temporary Asbestos Storage Containment Area does not guarantee re-issuance or continuance of a storage license.

SECTION IX. EXEMPTION FROM WETTING FOR ANY SIZED PROJECT.

A. General Provisions.

In renovation operations, wetting is not required if:

1. The owner/operator has obtained prior written approval from the Department based on a written application that wetting to comply with this Section would unavoidably damage equipment or present a safety hazard; and

2. The owner/operator uses one or more of the following emission control methods:

a. A local exhaust ventilation and collection system designed and operated to capture the particulate asbestos material produced by the stripping and removal of asbestos materials. The system must exhibit no visible emissions to the outside air or must be designed and operated in accordance with the requirements in EPA Regulation 40 CFR 61.152, as amended, and any subsequent amendments and editions;

b. A glovebag system designed and operated in accordance with the requirements of OSHA regulation 29 CFR 1926.1101, as amended, and any subsequent amendments and editions;

c. Leak-tight wrapping to contain all RACM prior to dismantlement;

3. In renovation operations where wetting would result in equipment damage or a safety hazard and the methods allowed in this Section cannot be used, an owner or operator may use another method after obtaining written approval from the Department based on its determination that the alternative method is equivalent to wetting. The owner/operator shall keep a copy of the Department's written approval at the work site and make it available for review by Department personnel upon request.

B. Temperature Constraints.

When the temperature at the point of wetting is below 0° C (32° F):

1. During periods when wetting operations are suspended due to freezing temperatures, the owner/operator must record the temperature in the area containing the asbestos-coated or covered facility components at the beginning, middle, and end of each workday and keep daily temperature records. A copy of these records must be maintained at the project site and made available for inspection by Department personnel upon request. The facility owner must maintain these temperature records for two years from the date the project is completed and shall provide a legible copy of the data to the Department upon request.

2. The owner/operator may request to use an alternative work practice by submitting to the Department a written description of control measures to be used that will afford the same level of protection as wetting. A legible copy of the Department's approval letter must be available at the project site for the duration of the asbestos project and shall be made available for review by Department personnel upon request.

3. The owner/operator shall remove facility components containing, coated with, or covered with RACM as units or in sections and shall secure the units or sections leak-tight in 6-mil or thicker polyethylene sheeting.

SECTION X. NESHAP PROJECTS.

A. Applicability.

The notification/application, work practice, air sampling, clean-up and disposal requirements of this Section shall apply to each owner/operator of a renovation asbestos project, where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed includes at least 260 linear feet on pipes, or 160 square feet on other facility components, or 35 cubic feet off of facility components where the area or length could not be measured prior to abatement.

B. Notification/Application.

1. Each owner/operator of a renovation or demolition operation to which this Section applies shall:

a. Provide the Department with written notification/application at least ten complete working days prior to any renovation or demolition operation, and pay all applicable project fees. Acceptable delivery of the notification and fee payment is by U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

b. Update/revise the notification/application and pay appropriate fees as required when any previously-notified information changes, including but not limited to, when the amount of asbestos affected increases or decreases more than five percent (5%), when the project start or completion date changes, when the disposal site changes, and/or the project has been cancelled. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day.

c. Prior to each demolition operation, and upon request for renovations, provide the Department with a complete legible copy of the asbestos building inspection report.

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- d. Begin abatement on the start date contained in the Department-issued asbestos project license.
- e. Project designs shall be submitted at the Department's request.

2. When the asbestos stripping or removal operation or demolition operation covered by this Section will begin on a date earlier than the previously-notified start date, the owner/operator shall provide the Department with written notification/application of the new start date at least ten working days before asbestos stripping or removal work will begin. The Department may waive this requirement on a case-by-case basis, although the owner/operator shall provide all required information in writing prior to commencing any abatement activities.

3. The owner/operator of an asbestos stripping or removal operation covered by this Section shall:

a. Notify the Department of the new start date by telephone as soon as possible before, but not later than, the original start date, when the renovation will begin after the date contained in the initial notification/application and in the asbestos project license issued by the Department.

b. Provide the Department with an updated written notice of the new start date as soon as possible before, but not later than, the original start date. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

c. Provide the Department with an updated written notice of the new completion date as soon as possible before, but not later than, one working day following the completion of the project when the asbestos stripping or removal operation covered by this Section will end on a date earlier than contained in the initial notification and in the asbestos project license issued by the Department. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

d. Provide the Department with written notification/application of the new completion date as soon as possible before, but not later than, the original completion date when the asbestos stripping or removal operation covered by this Section will end on a date later than contained in the initial notification/application and in the asbestos project license issued by the Department. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

4. The written notification /application shall include:

a. Indication whether the notification/application is an original, revision, or cancellation;

b. Name, address, and telephone number of the owner/operator;

c. Type of operation: demolition or renovation;

d. Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;

e. Description of the procedures and analytical methods used to detect the presence of ACM (regulated and non-regulated), date of inspection, and name, address, telephone number, and license number of the building inspector;

f. An estimate of the approximate amount of RACM and Category II nonfriable ACM to be removed from the facility in terms of length of pipe in linear feet; surface area in square feet on other facility components, or volume in cubic feet, if already off facility components;

g. Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;

h. Scheduled starting and completion dates of asbestos renovation or demolition;

i. Description of planned renovation or demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;

j. Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;

k. Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;

l. Description of procedures to be followed in the event that unexpected RACM is found or Category I or II nonfriable ACM becomes regulated;

m. Name, address, and telephone number of the waste transporter; and

n. Printed name and signature of the asbestos owner/operator submitting the notification, and date signed.

5. A complete notification/application shall contain all of the above information and shall be reported on a form similar to the one found in 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions.

C. Work Practice Requirements.

1. Preparation.

a. Prior to beginning removal, each owner/operator engaged in a renovation project subject to this Section shall:

(1) Define the work area using barrier tape and danger signs in accordance with the following or OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, if more stringent:

(a) Warning signs and tape that clearly separate the regulated area shall be provided and displayed at each location where a regulated area is required to be established by this Section. Signs shall be posted at a distance from the regulated area such that an employee may read the signs and take necessary protective steps before entering the area marked by the signs.

(b) The warning signs required by this Section shall bear the following information:

DANGER

ASBESTOS

CANCER AND LUNG DISEASE HAZARD

AUTHORIZED PERSONNEL ONLY

(2) Shut down, lock, and tag out all HVAC equipment in or passing through the work area. Seal each

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intake and exhaust opening and any seam in system components with two sheets of 6-mil polyethylene sheeting and tape.

(3) Detach and wet clean removable electrical, heating, and ventilating equipment and other items which may be connected to asbestos surfaces.

(4) Remove existing filters from the HVAC system and dispose of as asbestos-contaminated waste.

(5) Seal each opening between the work area and uncontaminated areas including windows, doorways, elevator openings, corridor entrances, drains, ducts, electrical outlets, grills, grates, diffusers, and skylights with a critical barrier consisting of at least two independent sheets of 6-mil or thicker polyethylene sheeting secured in place. These critical barriers must be maintained leak-tight for the duration of asbestos abatement.

(6) Thoroughly clean and remove all movable objects from the work area.

(7) Thoroughly clean, then cover and secure each non-movable object in the work area with at least one sheet of 4-mil or thicker polyethylene sheeting.

(8) Use polyethylene sheeting to isolate contaminated from uncontaminated areas, and ensure the sheeting is attached securely in place and properly maintained at all times.

(9) Prevent contamination of carpet with ACM, or dispose of the carpet as asbestos-contaminated waste.

(10) Cover floors not being abated with at least two layers of 6-mil or thicker polyethylene sheeting. Floor sheeting shall be installed first and shall extend at least 12 inches up the walls and be taped into place. No seams shall be located at wall/floor joints. Spray-applied polyethylene coating shall not be used.

(11) Cover walls and ceilings not being abated with at least one sheet of 4-mil or thicker polyethylene sheeting. Wall sheeting shall be installed to minimize joints and shall extend at least six inches beyond wall/floor joint and be taped into place. Ceiling sheeting shall extend at least 12 inches down the wall and be sized and taped into place. No seams shall be located at wall/ceiling or wall/wall joints.

(12) Construct a decontamination enclosure system adjoining the contained work area. The decontamination enclosure shall be built in a manner that will prevent track-out of RACM, and shall consist of: a clean room equipped with appropriate storage containers and adequate space for changing clothing; an air lock; a shower room containing hot and cold or warm running water controllable at the tap; and an equipment room suitable for storage of tools and equipment.

(13) Construct a clear viewing port measuring at least 24 inches by 24 inches in an external wall of the contained work area to allow unobstructed observation of abatement activities in the work area.

(14) Operate negative pressure differential equipment with HEPA filtration continuously from the time that barrier construction is completed through the time that acceptable final clearance air monitoring results are obtained.

(15) Utilize a manometer to measure negative pressure differential and operate it in accordance with the General Requirement Section of this regulation.

2. Removal.

Each owner/operator engaged in a renovation asbestos project subject to this Section shall ensure that:

a. Prior to removal, all RACM is thoroughly wet through to the substrate using amended water.

b. All RACM that has been stripped or removed in sections or units shall be:

(1) Thoroughly wet during stripping or removal and shall remain wet until disposed of in accordance with this regulation and 40 CFR 61.150, as amended, and any subsequent amendments and editions;

(2) Carefully lowered to the ground or floor, not dropped or thrown; and

(3) When removed or stripped at an elevation greater than 50 feet above ground level, transported to the ground via leak-tight chutes or containers.

c. At no time shall an owner/operator allow RACM to accumulate or become dry.

d. Structural components are thoroughly wet prior to wrapping in polyethylene sheeting for disposal.

e. For facility components such as reactor vessels, large tanks, and steam generators (but not beams, which must be stripped), ACM is not required to be stripped if the following requirements are met:

(1) The component is removed, transported, stored, disposed of, or reused without disturbing or damaging any of the ACM;

(2) The component is encased in leak-tight wrappings; and

(3) The leak-tight wrapping is labeled in accordance with EPA Regulation 40 CFR 61.149(d)(1)(i),(ii),and(iii), as amended, and any subsequent amendments and editions, during all loading, unloading, and storage operations.

f. When double polyethylene bags of at least 6-mil thickness are used for waste, bags shall be leak-tight. Excess air shall be removed from bags prior to sealing using a vacuum equipped with a HEPA filtration system in accordance with OSHA regulation 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

g. ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers.

h. Any person exiting or any equipment or machinery being removed from the contaminated work area shall be thoroughly decontaminated. If equipment or machinery is not or cannot be thoroughly decontaminated, it shall be sealed in leak-tight containers. No visible residue shall appear on the outside surface of the container.

3. Cleanup.

a. Each owner/operator engaged in a renovation abatement project subject to this Section shall ensure that:

(1) Following abatement, a visual inspection of the abated substrate is performed.

(2) A coating of a compatible encapsulating agent is applied to porous surfaces that have been stripped and cleaned of ACM. The encapsulant must be allowed to thoroughly dry prior to additional cleaning or final air clearance.

(3) The air sampler or the owner's representative inspects the abated area prior to final clearance. If

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there is any evidence of contamination, the asbestos contractor shall perform additional wet cleaning and HEPA vacuuming.

(4) All polyethylene sheeting, except for critical barriers and the decontamination enclosure system, is removed and disposed of as asbestos-contaminated waste.

(5) With only the critical barriers and decontamination enclosure system left in place, the entire work area, including any duct work, is wet-cleaned and HEPA vacuumed until no visible residue remains.

(6) Areas exceeding clearance standards are re-cleaned by the contractor using wet methods and HEPA vacuuming. Re-cleaning, drying, and retesting shall be repeated until the satisfactory clearance standard is achieved.

(7) Following satisfactory clearance of the work area, remaining polyethylene critical barriers and decontamination enclosure systems are removed and disposed of as asbestos-contaminated waste.

(8) Portable decontamination trailers are cleaned and polyethylene sheeting disposed of as contaminated waste.

b. Re-establishment of the work area shall only occur following completion of clean-up procedures and after clearance air monitoring has been performed and documented to the satisfaction of the air sampler or of the facility owner or his representative.

c. Replacement materials shall only be installed following completion of abatement. This does not include outdoor projects subject to this regulation.

4. Disposal.

The disposal requirements of the Disposal Section of this regulation shall apply.

D. Air Sampling and Analysis Procedures.

The background, daily, and clearance air monitoring requirements of the Air Sampling Section of this regulation shall apply.

SECTION XI. SMALL PROJECTS.

A. Applicability.

The notification/application, work practice, air sampling, clean-up, and disposal requirements of this Section shall apply to each abatement project where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is more than 25 but fewer than 260 linear feet on pipes, or more than 25 but fewer than 160 square feet on other facility components, or more than ten but fewer than 35 cubic feet of RACM off of facility components such that area or length could not be measured prior to abatement.

B. Notification/Application.

In a facility being renovated subject to this Section, the owner/operator shall provide the Department with written notification prior to any abatement and pay all applicable fees as follows:

1. Deliver the notification/application by U.S. Postal Service or commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

2. Postmark or deliver the notice at least four working days before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM.

3. Update/revise the notification/application and pay appropriate fees as required, when any previously-notified information changes, including but not limited to: when the amount of asbestos affected increases or decreases more than ten percent (10%), when the project start or completion date changes, and/or when the disposal site changes, and/or the project has been cancelled. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day. When the amount of asbestos affected changes such that the total quantity being abated qualifies as a NESHAP project, prior approval must be granted by the Department for work to proceed.

4. The Department may waive the four working days prior notice requirement on a case-by-case basis.

C. Air Sampling and Analysis Procedures.

The facility owner shall ensure that air sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-up Requirements.

1. An owner/operator engaged in a small asbestos abatement project shall:
 - a. Construct critical barriers to prevent the potential release of asbestos fibers from within the work area;
 - b. Prevent contamination of carpet with ACM, or dispose of the carpet as asbestos-contaminated waste;
 - c. Thoroughly wet all RACM prior to removal and keep it wet until disposal;
 - d. Prevent track-out and leakage of RACM onto uncontaminated surfaces;
 - e. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;
 - f. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed, leak-tight containers;
 - g. Ensure that any person exiting or any equipment or machinery being removed from the contaminated work area is thoroughly decontaminated. If equipment or machinery is not thoroughly decontaminated, it shall be sealed in leak-tight containers. No visible residue shall appear on the outside surface of the container; and
 - h. Ensure porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings.

2. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

SECTION XII. MINOR PROJECTS.

A. Applicability.

The notification, work practice, clean-up, and disposal requirements of this Section shall apply to each abatement project where the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or

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similarly disturbed is equal to or fewer than 25 linear feet on pipes, or is equal to or fewer than 25 square feet on other facility components, or is equal to or fewer than 10 cubic feet of RACM off facility components where the area or the length or area could not be measured prior to abatement.

B. Notification/Application.

In a facility being abated subject to this Section:

1. The owner/operator shall provide the Department with a written application at least two working days prior to any abatement and pay all applicable fees as follows:

a. Acceptable delivery of the notification shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

b. Update/revise the notification/application and pay appropriate fees as required when any previously-notified information changes, including but not limited to: when the amount of asbestos affected increases or decreases more than ten percent (10%), when the project start or completion date changes, and/or when the disposal site changes, and/or the project has been cancelled; or

c. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the following working day. When the amount of asbestos affected changes such that the total quantity being abated qualifies as a small or NESHAP project, prior approval must be granted by the Department for work to proceed.

2. Facility employees who do not meet the definition of a contractor as defined by this regulation, or a contractor who has obtained a temporary storage license may maintain a log of all minor abatements performed during a quarter, report them to the Department within 30 calendar days after the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

The facility owner shall ensure that air sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-up Requirements.

1. An owner/operator engaged in a minor asbestos abatement project shall:
 - a. Construct critical barriers to contain asbestos fibers released within the work area.;
 - b. Wet all RACM prior to removal and during containerization for disposal in an approved landfill;
 - c. Prevent track-out and leakage of RACM onto uncontaminated surfaces;
 - d. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;
 - e. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers;

f. Ensure that any person exiting or any equipment or machinery being removed from the contaminated work area is thoroughly decontaminated. If equipment or machinery is not thoroughly decontaminated, it shall be sealed in a leak-tight container. No visible residue shall appear on the outside surface of the container;

g. Ensure porous surfaces, that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings;

h. Containerize waste in appropriately labeled impermeable containers (6-mil polyethylene sheeting, bags, and/or fiber or metal drums), and store in an area that is secured and locked; and

i. Transport asbestos waste in a manner that does not release fibers into the air and dispose of at a landfill permitted to accept asbestos waste.

2. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

SECTION XIII. OPERATION AND MAINTENANCE ACTIVITIES.

A. Applicability.

1. The notification/application, work practice, clean-up, and disposal requirements of this Section shall apply to the non-industrial facility owner/operator and the O&M personnel covered under the facility's group license.

2. Workers are limited to an activity in which the amount of RACM disturbed does not exceed that which can be contained in one glovebag or one 6-mil polyethylene bag measuring no greater than 60 inches in length and width.

B. Notification/Application.

In a facility being abated that is subject to this Section:

1. The non-industrial facility owner/operator shall provide the Department with written notification/application and pay all applicable fees as follows:

a. Acceptable delivery of the notification shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

b. Update the notification when any previously-notified information changes.

c. Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the original start date when a project for which notification was made has been canceled.

2. Alternately, facility employees who do not meet the definition of a contractor as defined by this regulation may maintain a log of all O&M activities performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

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The facility owner shall ensure that sampling is performed in accordance with applicable requirements of the Air Sampling Section of this regulation.

D. Work Practice and Clean-Up Requirements.

1. An owner/operator engaged in an operation and maintenance activity shall:
 - a. Construct critical barriers to prevent the potential release of asbestos fibers from within the work area;
 - b. Wet all RACM prior to removal and during containerization for disposal at an approved landfill;
 - c. Prevent track-out and leakage of RACM onto uncontaminated surfaces;
 - d. Use HEPA vacuum equipment and wet-cleaning techniques to clean up the work area following abatement until there is no visible residue;
 - e. Ensure that ACM from within the work area is not permitted outside of the work area except in sealed leak-tight containers;
 - f. Containerize wetted waste in appropriately labeled impermeable containers (6-mil polyethylene sheeting, bags, and/or fiber or metal drums) and store in an area that is secured and locked;
 - g. Transport asbestos waste in a manner that does not release fibers into the air, and dispose of at a landfill permitted to accept asbestos waste.
2. Each owner/operator engaged in an O&M glovebag operation shall:
 - a. Ensure that the glovebag procedure is being performed only by persons who have received training in the method and are licensed as workers or supervisors in accordance with the requirements of this regulation;
 - b. Ensure that the glovebag is constructed and utilized in accordance with the glovebag requirements of this regulation and OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions;
 - c. Isolate the work area to prevent access by unprotected persons;
 - d. Display danger signs in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, at all approaches to any asbestos abatement area;
 - e. Remove all polyethylene sheeting, tape, glovebags and other equipment, and inspect the area for visible residue following abatement;
 - f. Wet-clean the area using amended water and a HEPA vacuum after surfaces have been allowed to dry. The sequence of wet cleaning and vacuuming shall be repeated until no visible residue is observed in the work area; and
 - g. Ensure that porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present. The encapsulant used must be compatible with subsequent coverings.

E. Disposal.

The owner/operator shall comply with the requirements of the Disposal Section of this regulation.

SECTION XIV. GLOVEBAG TECHNIQUE.

A. Applicability.

1. The requirements of this Section shall apply to the owner/operator of any NESHAP, small, minor, or O&M abatement project when glovebag operations are implemented.

2. The owner/operator shall ensure that asbestos-containing waste from glovebag operations is wet at all times during abatement, storage, and transportation and is deposited in a landfill approved or permitted to accept asbestos waste.

B. Glovebag Operations.

Glovebag systems may be used to remove ACM from straight runs of piping, elbows, and other connections when performed in compliance with the provisions of this Section and OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

1. The owner/operator shall ensure that the glovebag is constructed and utilized in accordance with the following requirements:

a. The work area is isolated to prevent access by unprotected persons.

b. Danger signs are displayed at all approaches to any asbestos abatement area in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

c. The glovebag procedure is performed only by persons who have received training in the method and are licensed as workers or supervisors in accordance with the requirements of this regulation.

d. At least two persons shall perform glovebag removal operations.

e. Each glovebag shall be made of 6-mil thick plastic and shall be seamless at the bottom.

f. Each glovebag used on elbows and other connections must be designed for that purpose and used without modifications.

g. Each glovebag shall be installed so that it completely covers the circumference of pipe or other structures where the work is to be performed.

h. Each glovebag shall be smoke-tested for leaks and any leaks sealed prior to use.

i. A glovebag shall be used only once and may not be slid or moved.

j. Each glovebag shall not be used on surfaces whose temperature exceeds 150 degrees Fahrenheit.

k. Prior to disposal, each glovebag shall be collapsed by removing air within it using a HEPA vacuum.

l. Before beginning the operation, loose and friable material adjacent to the glovebag or glovebox operation shall be wrapped and sealed in at least two layers of 6-mil polyethylene.

m. Where a system uses an attached waste bag, such bag shall be connected to the collection bag using a hose or other material that shall withstand the pressure of ACM waste and water without losing its integrity.

n. A sliding valve or other device shall separate the waste bag from the hose to ensure no exposure when the waste bag is disconnected.

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C. Negative Pressure Glovebag Systems.

1. Negative pressure glovebag systems shall be used to remove ACM from piping.
2. In addition to the requirements for glovebag systems in Section B above, negative pressure glovebag systems shall have a HEPA vacuum attached to the glovebag/box to prevent collapse during removal.
3. A HEPA vacuum shall be used to prevent collapse of the bag during removal and shall run continually until completion of operation, at which time the pipe shall be encapsulated, and the bag and ACM shall be isolated prior to removal of the bag from the pipe.

D. Negative Pressure Glovebox Systems.

Negative pressure gloveboxes may be used to remove ACM from pipe runs when the following work practices are utilized:

1. Gloveboxes shall be constructed with rigid sides and made from metal or other material that can withstand the weight of the ACM and water used during removal.
2. A negative pressure generator shall be used to create negative pressure in the system.
3. An air filtration unit shall be attached to the box.
4. The box shall be fitted with gloved apertures:
 - a. An aperture at the base of the box shall serve as a bagging outlet for waste ACM and water.
 - b. A back-up generator shall be present on site.
 - c. Waste bags shall consist of 6-mil or thicker plastic and be double-bagged before they are filled.
5. At least two persons shall perform the removal.
6. The box shall be smoke-tested for leaks and any leaks sealed prior to use.
7. Loose or damaged ACM adjacent to the box shall be wrapped and sealed in at least two layers of 6-mil or thicker plastic prior to the job or otherwise made intact prior to the job.
8. A HEPA filtration system shall be used to maintain pressure barrier in the box.

E. Air Sampling and Analysis Procedures.

1. Background and daily area monitoring shall be performed for all NESHAP glovebag/glovebox projects. Personnel air sampling in the worker's breathing zone may be used to satisfy the requirement for daily area monitoring.
2. Non-aggressive Phase Contrast Microscopy (PCM) clearance air monitoring shall, at a minimum, be required for NESHAP and small glovebag or glovebox projects.
3. If personnel fiber counts exceed the PCM clearance standard of 0.01 fibers per cubic centimeter, aggressive clearance air monitoring shall be performed.

F. Glovebag/Glovebox Work Practices.

1. Use of the glovebag shall be terminated, cleanup procedures contained in this Section shall be implemented, and clearance by TEM analysis performed if the owner/operator:

- a. Fails to keep RACM in the glovebag/glovebox;
- b. Fails to keep RACM adequately wet;
- c. Disturbs or dislodges RACM outside of the glovebag/glovebox; and/or
- d. Experiences glovebag failure, including any breach in the glovebag/glovebox.

2. Glovebag/Glovebox Clean-up. Following removal, the owner/operator shall ensure that:

a. Porous surfaces that have been stripped or cleaned of RACM are encapsulated to secure any residual fibers that may be present prior to removing the glovebag or glovebox from the abated pipe. The encapsulant used must be compatible with subsequent coverings.

b. All polyethylene sheeting, tape, glovebags or gloveboxes and other equipment must be removed and the area inspected for visible residue.

c. Wet-cleaning using amended water is performed, followed by HEPA vacuuming after surfaces have been allowed to dry. The sequence of wet cleaning and vacuuming shall be repeated until no visible residue is observed in the work area.

d. When required, final TEM air clearance shall be performed following visual clearance.

G. Disposal.

All applicable disposal requirements of this regulation shall apply.

SECTION XV. NON-FRIABLE PROJECTS.

A. Applicability.

The requirements of this Section shall apply to the owner/operator of any renovation at any facility where the ACM being removed remains non-friable.

B. Notification/Application.

1. Each owner/operator shall:

a. Contact the landfill to ensure acceptance of non-friable ACM waste;

b. Provide the Department with a written application and obtain a Department-issued abatement license for the project four (4) working days prior to beginning abatement for NESHAP sized projects of 160 sf or 260 Lf. The license shall be maintained at the project site for the duration of the project;

c. For all other projects, provide a written application prior to disposal;

d. Facilities and those in possession of a temporary asbestos storage containment area license may notify the Department quarterly;

e. Prior to disposing of a non-regulated residential structure, provide a written application to the

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Department;

f. Applications must also be submitted for projects where waste will be disposed of out-of-state;

g. Provide the following information in the written application:

(1) Name, address, and telephone number of property/facility owner;

(2) Street address of the property or facility where removal will occur;

(3) Amount of non-friable ACM to be abated;

(4) Description of material (for example, cement-like tiles, asphaltic shingles, cementitious siding, roof flashing); and

(5) Name, address, telephone number, contact person, and location (county, city, state) of the landfill that the owner/operator has contacted for disposal of ACM waste;

h. The written disposal license issued by the Department must accompany the non-friable ACM waste to the landfill.

C. Work Practices.

1. The owner/operator shall prevent dust from being released during the removal of non-friable ACM to prevent exposure.

2. Category I and Category II ACM that will be or has been subjected to grinding, sanding, cutting, chipping, drilling, or abrading shall be considered regulated ACM, and the owner/operator shall comply with all applicable requirements of this regulation.

3. Category I and Category II ACM that will not be or has not been subjected to grinding, sanding, cutting, chipping, drilling, or abrading shall be considered non-regulated ACM, and the owner/operator shall comply with all applicable requirements of OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments or editions.

4. The owner/operator shall ensure that ACM and asbestos-contaminated waste is not intentionally burned or recycled.

D. Disposal.

1. Transport and disposal shall occur in a manner that will not permit the release of asbestos fibers into the air.

2. Disposal shall occur at a landfill permitted or approved to accept asbestos waste.

3. All containers shall be labeled with the following warning:

DANGER

CONTAINS ASBESTOS FIBERS

AVOID CREATING DUST

CANCER AND LUNG DISEASE HAZARD

4. The owner/operator shall:
 - a. Obtain a waste shipment record or other shipment manifest at the landfill to document disposal of all asbestos waste;
 - b. Ensure that a waste shipment record or other shipment manifest is signed by the landfill operator; and
 - c. Submit a copy of the waste shipment record or other shipment manifest to the Department within 30 working days after abatement completion.

SECTION XVI. STANDARDS FOR DEMOLITIONS.

A. Applicability.

The requirements of this Section shall apply to the owner/operator of a facility to be demolished.

B. Notification/Application.

1. Each owner/operator of a demolition to which this Section applies shall:
 - a. Submit to the Department a written DHEC demolition application at least ten working days in advance of the proposed demolition start date.
 - b. Delivery of the application shall be by U.S. Postal Service, commercial delivery service, by hand or by other methods deemed acceptable by the Department.
 - c. Acceptable methods of payment shall be by check or money order made payable to SCDHEC, credit card (VISA, MasterCard, or Discover), and cash.
 - d. Submit a written demolition project license application for each separate facility that includes all information required on the application form.
 - e. Submit a complete, legible copy of the building inspection report, which must be less than three years old, for each facility to be demolished.
2. Obtain an asbestos demolition license for any facility, regardless of whether the required building inspection indicates the presence of ACM.
3. When a demolition will begin on a date earlier than the previously-notified start date, the facility owner/operator shall provide the Department with a written notification of the new start date at least ten working days prior to the previously-notified demolition start date.
4. The owner/operator of a demolition operation covered by this section shall:
 - a. Notify the Department by telephone no later than the original start date when the demolition will begin on a date later than the previously-notified start date.
 - b. Provide the Department with a revised written application of the new start date no later than the previously-notified start date.
 - c. Provide the Department with a revised written notification/application immediately when any information pertaining to the demolition project changes, including but not limited to, the start and/or completion date, the demolition contractor, or the landfill.

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5. Any facilities being demolished under order of a State or local government agency because the facility is structurally unsound, in imminent danger of collapse, and is a threat to public health or safety may be exempt from the ten-working day notification requirement. However, the owner/operator shall submit a complete demolition license application and written justification documents to the Department for approval prior to commencing the demolition activities.

a. The application shall include all of the following information:

- (1) Indication whether the notification is an original, revision, or cancellation;
- (2) Name, address, and telephone number of the owner/operator;
- (3) Indication that demolition is the type of operation;
- (4) Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;
- (5) Description of the procedures and analytical methods used to detect the presence of ACM (regulated and nonregulated), date of inspection, and name, address, telephone number, and license number of the building inspector;
- (6) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;
- (7) Scheduled starting and completion dates of asbestos renovation or demolition;
- (8) Description of planned demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;
- (9) Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;
- (10) Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;
- (11) Description of procedures to be followed in the event that unexpected RACM is found;
- (12) Name, address, and telephone number of the waste transporter; and
- (13) Printed name and signature of the owner/operator submitting the notification and the date signed.

b. The owner/operator shall submit to the Department a clear, legible copy of the signed order that contains all of the following information along with the completed demolition project application:

- (1) The name, title, and authority of the State or local government representative who ordered the demolition;
- (2) The date that the order was issued; and
- (3) The date on which the demolition was ordered to begin.

C. Removal of ACM prior to Demolition.

1. Any demolition of a structure or portion of a structure that contains structural members or components composed of or covered by ACM shall be preceded by removal of all such materials.
2. All ACM, with the exception of those material referenced in Paragraph E. of this Section, shall be removed in accordance with work practice requirements for applicable NESHAP, small, or minor projects prior to demolition.

D. Air Sampling Procedures.

Air monitoring is not required during a demolition except when necessary due to an extenuating circumstance and/or required by the Department.

E. Exemptions from Removal of ACM prior to Demolition.

The following categories of asbestos-containing materials may be left in place during demolition:

1. ACM on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition.
2. RACM that was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, cannot be safely removed. If not removed for safety reasons, all exposed RACM and any asbestos-contaminated debris must be treated as regulated asbestos-containing waste material.
3. Category I and Category II nonfriable mastic, glue, and adhesive ACM that is not friable or in poor condition, and where the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition operations.

F. Disposal of Demolition Debris.

1. Waste that does not contain asbestos may be disposed of as construction debris at a landfill approved or permitted to accept such waste.
2. The owner/operator shall comply with the requirements of the Disposal Section of this regulation and shall ensure that asbestos-containing or asbestos-contaminated waste materials are not burned or recycled.

G. Project License Fees.

1. A project license is required for every facility that is to be demolished, including those that have been destroyed by fire or those whose required building survey indicates there is no ACM present.
2. The Department shall not issue a project license for a demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.
3. Fees shall not be refunded for projects for which the Department has issued a project license.
4. A project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds, in which case the licensee shall be subject to enforcement action for operation without a valid license.

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SECTION XVII. OUTDOOR PROJECTS.

A. Applicability.

The notification, work practice, clean-up, and disposal requirements of this Section shall apply to each owner/operator of any regulated O&M or minor, small or NESHAP outdoor renovation.

B. Notification/Application.

1. NESHAP Project.

a. Each owner/operator of a renovation or demolition operation to which this Section applies shall:

(1) Provide the Department with written notification/application at least ten working days prior to any renovation or demolition and pay all applicable project fees. Acceptable delivery of the notification and fee payment is by U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

(2) Update the notification/application and pay appropriate fees as necessary when any previously-notified information changes, including but not limited to, when the amount of asbestos affected changes, when the project start or completion date changes, or when the disposal site changes.

(3) Provide the Department with a legible copy of the building inspection report upon request.

(4) Begin abatement on the start date contained in the Department-issued asbestos project license.

b. When the asbestos stripping or removal operation covered by this Section will begin on a date earlier than the previously-notified start date, the owner/operator shall provide the Department with written notification of the new start date at least ten working days before asbestos stripping or removal work will begin.

c. When the asbestos stripping or removal operation covered by this Section will begin after the date contained in the initial notification and in the asbestos project license issued by the Department, the owner/operator must:

(1) Notify the Department of the new start date by telephone as soon as possible before, but not later than, the original start date; and

(2) Provide the Department with an updated written notice of the new start date as soon as possible before, but not later than, the original start date. Acceptable delivery of the updated notice is by the U.S. Postal Service or commercial delivery service, by hand, or by other methods deemed acceptable by the Department.

d. The written notification/application shall include:

(1) Indication whether the notification is an original, revision, or cancellation;

(2) Name, address, and telephone number of the owner/operator;

(3) Type of operation: demolition or renovation;

(4) Description of the facility or affected part of the facility, including the square footage, number of floors, age, and prior, present, and intended use of the facility;

(5) Description of the procedures and analytical methods used to detect the presence of ACM (regulated and non-regulated), date of inspection, and name, address, telephone number, and license number of the building inspector;

(6) An estimate of the approximate amount of RACM and Category II nonfriable ACM to be removed from the facility in terms of length of pipe in linear feet, in terms of surface area for other facility components in square feet, or in terms of volume if already off of facility components in cubic feet;

(7) Location and street address (including building number or name and floor or room number, if appropriate), city, county, and state of the facility being demolished or renovated;

(8) Scheduled starting and completion dates of asbestos renovation or demolition.

(9) Description of planned renovation or demolition work to be performed, emission control measure(s) to be employed, and a description of the affected facility or facility components;

(10) Description of the engineering controls and procedures to be used to comply with the work practice requirements of this regulation;

(11) Name and location of the waste disposal site where the regulated asbestos-containing waste material will be deposited. Regulated asbestos-containing waste must be deposited into a landfill approved or permitted to accept asbestos waste;

(12) Name, address, and telephone number of the waste transporter; and

(13) Printed name and signature of the asbestos owner/operator submitting the notification and date signed.

e. A complete notification/application shall contain all of the above information and shall be reported on a form similar to the one found in 40 CFR Part 61, Subpart M, as amended, and any subsequent amendments and editions.

2. Small Project.

In a facility being renovated subject to this Section, the owner/operator shall provide the Department with at least a five calendar day advance written notification of intent to renovate and pay applicable fees as follows:

a. Acceptable delivery of the notification/application shall be by U.S. Postal Service, commercial delivery service, by hand, facsimile transmission, or by other methods deemed acceptable by the Department.

b. Postmark or deliver the notice before asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM.

c. Update the notification/application when any previously-notified information changes and pay additional project fees as necessary.

d. The Department may waive the five calendar-day notice on a case-by-case basis.

3. Minor or O&M Projects.

In a facility being abated subject to this Section:

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a. The owner/operator shall provide the Department with written notification/application prior to any abatement and pay all applicable fees as follows:

(1) Acceptable delivery of the notification/application shall be by U.S. Postal Service, commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

(2) Update the notification/application when any previously-notified information changes.

(3) Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the original start date when a project for which notification was made has been canceled; or

b. Facility employees who do not meet the definition of a contractor as defined by this regulation or a contractor who has obtained a temporary storage license may maintain a log of all minor abatements performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include, but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of removal, names of individuals who performed the abatement, exact location for temporary storage of asbestos wastes, and the name of the landfill used for disposal.

C. Air Sampling and Analysis Procedures.

1. For projects subject to 40 CFR Part 763, AHERA, as amended, and any subsequent amendments or editions, the facility owner shall ensure that a licensed air sampler performs clearance air monitoring after abatement in areas to be reoccupied, including porticos and covered exterior walkways, and abatement on exterior portions of mechanical systems used to condition interior spaces.

2. Air monitoring is not required for Outdoor Projects that are not subject to EPA 40 CFR Part 763, AHERA regulation.

D. Work Practice Requirements.

1. Preparation.

The owner/operator shall minimize, to the extent reasonable and necessary, the exposure to persons downwind of the project.

2. Removal.

a. Wet removal methods shall be used.

b. There shall be no release of visible emissions during preparation, removal, or cleanup.

3. Clean-up.

a. Following removal, the owner/operator shall ensure that:

(1) The abated area is thoroughly cleaned using wet methods and amended water and surfaces have been allowed to dry.

(2) Once dry, the abated area is vacuumed using a vacuum equipped with HEPA cartridges or filters.

(3) The sequence of wet cleaning and vacuuming is repeated until no visible residue can be observed.

b. The facility owner shall ensure that the work area is inspected for any remaining visible residue. Evidence of contamination will necessitate additional cleaning by the contractor.

c. For porous surfaces that have been stripped or cleaned of RACM, the owner/operator shall ensure that a coat of encapsulant is applied to the abated surface to secure any residual fibers that may be present. The encapsulant chosen must be compatible with subsequent coverings.

E. Disposal.

The disposal requirements of the Disposal Section of this regulation shall apply to outdoor projects.

SECTION XVIII. ENCAPSULATION AND ENCLOSURE.

A. Applicability.

1. The notification/application, air sampling, work practice, clean-up, and disposal requirements of this Section shall apply to each owner/operator engaged in an encapsulation or enclosure operation where mechanical sprayers will be utilized and the potential to disturb RACM will involve amounts greater than 160 square or 260 linear feet of surfacing materials or thermal system insulation.

2. Surfaces that have been previously coated or treated with an encapsulant and that are not in poor condition are exempt from the requirements of this Section.

B. Notification/Application.

1. In a facility with RACM being encapsulated, the owner/operator shall:

a. Provide the Department with written notification/application at least ten complete working days prior to beginning any encapsulation activities.

b. Notify the Department as soon as possible by telephone and follow-up in writing when any previously-notified information changes or when a previously-notified project has been canceled.

2. Acceptable delivery of notification/application shall be by U. S. Postal Service, commercial delivery service or facsimile transmission, by hand, or by other methods deemed acceptable by the Department.

C. Air Sampling and Analysis Procedures.

1. Background Monitoring.

a. Background ambient air sampling shall be required.

b. At least five air samples shall be collected prior to the start of abatement activities in order to obtain an index of background airborne fiber concentrations.

c. Representative samples should be taken both inside and outside the work area within the facility to establish existing ambient air levels under normal activity conditions.

d. The air sampler shall document any variations and justifications for the variances, and shall provide the information to the Department upon request.

2. Clearance.

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The owner/operator shall ensure that non-aggressive TEM clearance air monitoring is conducted prior to re-occupancy of any area that has been encapsulated.

D. Work Practice Requirements.

1. Preparation.

a. The owner/operator of an encapsulation or enclosure operation shall:

(1) Define the work area using barrier tape and danger signs in accordance with OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions.

(2) Shut down, lock, and tag out all HVAC equipment in or passing through the work area.

(3) Remove existing filters and dispose of as asbestos-containing waste.

(4) Securely seal all intake and exhaust openings and any seams in system components with 6-mil or thicker polyethylene sheeting and tape.

(5) Securely seal each opening between the work area and uncontaminated areas, including but not limited to windows, doorways, elevator openings, corridor entrances, drains, ducts, electrical outlets, grills, grates, diffusers, and skylights, with a critical barrier consisting of at least one sheet of 6-mil or thicker polyethylene sheeting and tape.

(6) Thoroughly clean and remove all movable objects from the work area.

(7) Thoroughly clean, then cover and secure all non-movable objects in the work area with at least one layer of 4-mil or thicker polyethylene sheeting.

(8) Cover and secure all surfaces not being encapsulated or enclosed with at least one layer of 4-mil polyethylene sheeting for walls or ceilings and 6-mil polyethylene sheeting for floors.

2. Encapsulation/Enclosure Procedures.

a. During any encapsulation of RACM, the owner/operator shall ensure that:

(1) The encapsulant chosen for use is compatible with the substrate to which it will be applied and is appropriate for the application intended.

(2) When airless sprayers are utilized, nozzle pressure shall be adjusted between 400 and 1,500 pounds per square inch (psi).

(3) Loose, damaged, or fallen RACM is cleaned immediately using wet methods and HEPA vacuuming.

(4) RACM is not tracked from the work area onto uncontaminated surfaces.

(5) Once all encapsulated surfaces have completely dried, each surface is wet wiped or HEPA vacuumed.

b. During any enclosure of RACM, the owner/operator shall ensure that:

(1) The enclosure is constructed air-tight so as to prevent the escape of airborne asbestos fibers.

(2) Loose, damaged, or fallen RACM is cleaned immediately using wet methods and HEPA vacuuming and is properly packaged for disposal.

(3) RACM is not tracked from the work area onto uncontaminated surfaces.

(4) Wet methods and HEPA vacuums are used to clean any fallen RACM immediately.

3. Disposal.

The requirements of the Disposal Section of this regulation shall apply.

SECTION XIX. REQUIREMENTS FOR TRAINING COURSES, INSTRUCTORS, AND TRAINING PROVIDERS.

A. Asbestos Training Course Licenses.

1. An asbestos training course provider who intends to present asbestos training courses within the State shall submit an application for approval, for each initial or refresher training course discipline to be taught, that contains all information necessary to verify qualifications as required by the regulation.

2. An asbestos training course provider must have a separate Department-issued license for each different initial or refresher training course discipline.

3. Licenses for asbestos training course providers will be restricted to courses approved by the Department in accordance with the requirements of this regulation.

4. Each asbestos course license is valid for one year from date of issue, regardless of the number of times the course is taught during the year.

5. Each individual seeking to teach or instruct any portion of any mandatory asbestos training course, regardless of discipline, must submit an instructor application that contains all information necessary to verify qualifications as required by this Section and be approved by the Department.

6. When an asbestos training course instructor seeks to conduct mandatory asbestos training courses in more than one discipline, the instructor must be approved for each separate discipline by the Department.

7. Upon initial approval and licensing of an asbestos training course, the Department will audit and assess the training course provider an initial audit fee prescribed in this regulation.

8. Upon renewal of a training course license, the training course provider will be assessed the annual license renewal fee prescribed in this regulation.

9. An asbestos training course must be approved and currently licensed by the Department on the date that it is taught to be acceptable as a basis for documentation that the person receiving the course certificate has completed the requisite training for asbestos accreditation in any specific work practice topic or discipline.

B. Personnel Licensing Requirements.

In order for an initial or refresher training course in any discipline to be acceptable as a basis for personnel licensing pursuant to this regulation, the course must be licensed and instructor(s) must be approved by the Department.

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C. Department Approval.

To qualify for Department approval, an initial or refresher training course in any discipline shall meet the following requirements:

1. Course Content.

a. Each course shall:

(1) Correspond only to a single discipline; and

(2) Provide coverage of specific topics, including instruction in the requirements of this regulation as requested by the Department, and satisfy the requirements of:

(a) The AHERA Model Contractor Accreditation Plan, 40 CFR 763, Subpart E, Appendix C (Federal Register, Volume 59, Number 23, Thursday, February 3, 1994), as amended, and any subsequent amendments and editions, and this regulation; and

(b) The 16-hour Operation and Maintenance Worker Course as specified in this Section.

b. Initial training courses for all supervisors and workers shall include hands-on glovebag training with smoke testing of the glovebag seal in accordance with OSHA 29 CFR 1926.1101(g)(5)(ii), as amended, and any subsequent amendments and editions.

c. Supervisor and worker refresher course hands-on training shall be required and shall include instructor demonstrations; video applications; and written illustrations or representations or other methods designed to communicate work practice procedures to the student. Students are not required to handle equipment or to participate in simulated abatement activities.

2. Course Presentation.

a. An initial worker or O&M worker training course may be conducted by a single qualified instructor if the instructor meets the minimum requirements of this Section.

b. Initial training courses in all disciplines (except worker) shall be taught by at least two Department-approved instructors.

3. Duration of Training.

a. A training course shall not include more than eight hours of training during a single 24-hour period.

b. One day of training equals no less than six and one-half hours of actual classroom or hands-on activities.

c. The total number of hours required for any initial training course shall be completed within a period not to exceed 14 calendar days.

4. Effectiveness of Training.

a. Instructors shall be evaluated by Department-conducted on-site audits or by audits conducted by representatives from states with whom the Department has established reciprocity.

b. Training providers shall conduct courses in a physical environment conducive to learning (such as a classroom).

c. The maximum enrollment of an initial asbestos course shall be 40 participating students.

d. There shall be no more than ten students per instructor during all hands-on portions of initial training.

5. Foreign-Language Instruction.

a. Worker course instructors and students shall be fluent in the language in which the course is being taught.

(1) An English-speaking instructor shall not use an interpreter to instruct foreign-language trainees.

(2) Training courses in all disciplines (except worker) shall be conducted only in English.

b. The training provider shall provide trainees with course materials accurately translated into the language in which the course is being conducted.

6. Testing.

a. At the conclusion of each initial or refresher course, the training provider shall administer an examination in written or oral form to any trainee seeking to obtain a license to perform asbestos-related activities. Oral examinations are allowed to be administered only to individuals seeking training in the worker category.

b. The training provider shall administer an examination designed to test the trainees' familiarity with those issues relevant to the safe and proper performance of asbestos projects.

c. The training provider shall construct the course examination from a pool of validated questions and shall prepare a new examination for each course presentation.

d. A trainee who fails to pass an initial examination by not achieving a minimum score of 70 on a 100-point scale may be retested once. Upon failing to pass an examination on the second attempt, the trainee shall retake the entire training course before being allowed to retest for that discipline.

e. The Department may approve alternative testing it deems appropriate.

7. Certificates.

a. The training course provider shall issue a unique numbered certificate to each student who successfully completes the training course and passes the examination.

b. Each numbered certificate shall include the following information:

(1) Name and last four digits of the Social Security number of the trainee;

(2) Unambiguous course title indicating the discipline and specifying whether the training is an initial or refresher course;

(3) A unique certificate number;

(4) Inclusive dates of training course;

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(5) Examination date;

(6) A statement indicating that the person whose name appears on the certificate has completed the training course and successfully passed an examination;

(7) For courses covered under 40 CFR Part 763, Subpart E, Appendix C, as amended, and any subsequent amendments and editions, a certificate expiration date that is one year after the date the course was completed and the applicable examination passed;

(8) The name, address, and telephone number of the training provider;

(9) The printed name and signature of the principal instructor;

(10) Training course location; and

(11) A statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II of Section 206 of the Toxic Substances Control Act (15 U.S.C.A. Section 2646), with the exception of O&M certificates.

8. Notifications and Reporting.

a. A training provider who intends to present a training course within the state shall notify the Department in writing at least ten calendar days prior to the first day of the course. The written notification must include the following information:

(1) Training provider name, address, telephone number, and contact person;

(2) Training course title;

(3) Inclusive dates of course and applicable exam;

(4) Daily start and completion times;

(5) Location and detailed directions to course facility;

(6) Language in which the course is taught;

(7) Names of the instructors; and

(8) A copy of the training course agenda. (If the agenda is identical to one previously submitted to the Department, an additional copy is not required.)

b. Within seven days of conclusion of a training course presented within the State, the training provider shall submit the following information to the Department:

(1) Name of the course indicating whether initial or refresher;

(2) Inclusive dates of the course and examination;

(3) Names of all course instructors and topics taught;

(4) The course location;

(5) The name and Social Security number of every trainee, including names of those who did not successfully pass or otherwise complete the course;

(6) The unique certificate numbers of every trainee who completed the course and passed the examination; and

(7) Name, address, and telephone number of the training provider.

c. Out-of-state training providers shall submit any information specified in this Section to the Department upon request.

d. Failure to submit a written course notification or course roster in the timeframe prescribed by this Section may result in the rejection of the course and certificates for licensure by the Department.

9. Record Keeping.

a. The person, sole proprietorship, public corporation, or incorporated entity operating as a training provider shall retain copies of records related to asbestos training approved pursuant to this regulation for three years or for a period of time as defined in Title II, Section 206 of the Toxic Substances Control Act of the United States (15 U.S.C.A. Section 2646), as amended.

b. In the event that ownership of the sole proprietorship, public corporation, or incorporated entity operating as a training provider is transferred to a different owner, all records maintained during the previous three years shall be transferred and maintained by the new owner.

c. Records that must be maintained shall include those defined in Title II, Section 206 of the Toxic Substances Control Act of the United States (15 U.S.C.A. Section 2646), as amended, and in all cases shall include the following:

(1) Course curriculum materials;

(2) Examinations and scores of all persons who have taken examinations;

(3) Instructor applications and resumes;

(4) Training course approval applications;

(5) Rosters of individuals taking training courses;

(6) Copies of training course notifications; and

(7) Copies of all correspondence with federal and/or state accreditation agencies regarding instructor and training course approvals, disapprovals, suspensions, or audits.

D. Operation and Maintenance (O&M) Worker Course.

1. An initial O&M training course shall be at least 16 hours in length and shall provide, at a minimum, information on all of the following topics:

a. The physical characteristics of asbestos, including fiber size, aerodynamic characteristics, and physical appearance.

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b. The health hazards of asbestos, including the nature of asbestos-related diseases, routes of exposure, dose-response relationships, synergism between cigarette smoking and asbestos exposure, latency period of diseases, and health basis for the standards.

c. Typical locations, uses, and types of ACM; and recognition of damage, deterioration, and delamination of ACM.

d. Employee personal protective equipment, including the types and characteristics of respirators; limitations of respirators; proper selection, inspection, donning use, maintenance and storage procedures for respirators; methods for field testing of the face-piece-to-face seal (positive and negative-pressure fit checks); qualitative and quantitative fit test procedures; variability between field and laboratory protection factors that alter respiratory fit (e.g., facial hair); the components of a proper respiratory protection program; selection and use of personal protective clothing; use, storage, and handling of non-disposable clothing; and regulations covering personal protective equipment.

e. Air monitoring procedures and requirements included under OSHA 29 CFR 1926.1101, as amended, and any subsequent amendments and editions, including a description of equipment and methods, reasons for air monitoring, types of samples, and current standards with proposed changes.

f. Description of the proper methods of handling RACM to include state-of-the-art work practices for asbestos O&M activities including: purpose, proper construction, and maintenance of barriers; posting of warning signs; electrical and ventilation system lockout/tagout; proper working techniques for minimizing fiber release; use of wet methods and surfactants; use of HEPA vacuums; and proper cleanup and disposal procedures. Work practice requirements as they apply to removal, encapsulation, enclosure, and repair shall be discussed individually.

2. A yearly review course shall be one day in length and shall review the health hazards associated with exposure to asbestos; the locations, uses, types, and condition of ACM; hands-on activities; updated information on state-of-the-art procedures and equipment; and regulatory changes and interpretations. Actual instruction time shall be a minimum of six and one-half hours. The Department may request coverage of specific topics.

3. The requirements of this Section pertaining to course presentation, effectiveness of training, foreign-language instruction, testing, certificates, notification and reporting, record keeping, qualifications for instructors, course approval, and periodic audits shall apply to O&M courses.

E. Qualifications for Instructors of Non-Work Practice Topics.

1. Applicants seeking approval to teach segments of asbestos training courses other than work practice or hands-on exercises shall be actively working in the field of expertise for which he or she is conducting training.

2. The following documentation is required for instructors of non-work practice topics:

a. A copy of a high school, General Education Development (GED), or college/university diploma;

b. A copy of all professional licenses relevant to the subject matter being taught; and

c. The name, address, and telephone number of the applicant's current employer.

F. Initial and Refresher Course Instructor Qualifications.

The Department reserves the right to reject instructor training and/or experience that it deems unacceptable for qualification.

1. Worker Discipline.

a. Previous Training.

The applicant shall meet current EPA and Department accreditation requirements for supervisors.

b. Education/Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant does not possess either a GED or high school diploma, the applicant shall:

(a) Have at least 360 instructional hours as an instructor in an EPA-approved worker course; and

(b) Have at least 1,440 hours experience in a worker or supervisory capacity of contained work areas.

(2) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have at least 960 hours of documented experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 240 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 240 documented hours of occupational safety, health, and environmental instructional hours taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.1.b.(2)(b) of this Section.

(3) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have at least 480 hours of documented experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 120 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 120 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.1.b.(3)(b) of this Section.

2. Supervisor Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for supervisors.

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b. Education Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant does not possess either a high school or GED diploma, the applicant shall:

- (a) Have at least 360 documented hours as an instructor in an EPA-approved supervisor course;
- and
- (b) Have at least 1,440 hours of documented experience in a supervisory capacity of contained work areas.

(2) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have at least 960 hours of documented experience in a supervisory capacity of contained work areas; or

(b) Have at least 240 documented hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 240 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.2.b.(2)(b) of this Section.

(3) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have at least 480 hours experience in a worker, supervisory, or consulting capacity of contained work areas; or

(b) Have at least 120 instructional hours as an instructor in an asbestos worker or supervisor course.

(c) The applicant may substitute 120 hours of occupational safety, health, and environmental instructional hours taught in courses required to meet federal and State regulations for the instructional hours required in Paragraph F.2.B.(3)(b) of this Section.

3. Management Planner Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for management planners.

b. Education/Asbestos Work Experience.

The applicant shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented management planning experience showing at least 25 management plans written in the last three years, or documented experience as the project manager for at least 25 asbestos projects in the last three years, or a combination of management plans and projects managed; or

(b) Have at least 48 documented hours as an instructor in an EPA-approved management planner course.

(c) The applicant may substitute 48 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.3.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented management planning experience showing at least 12 management plans written in the last three years, or documented experience as the project manager for at least 12 asbestos projects in the last three years, or a combination of management plans and projects managed; or

(b) Have at least 32 documented hours as an instructor in an EPA-approved management planner course.

(c) The applicant may substitute 32 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.3.b.(2)(b) of this Section.

4. Building Inspector Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for asbestos building inspectors.

b. Education/Asbestos Work Experience.

The applicants shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented experience including asbestos inspections in at least one million square feet of building space in the last three years; or

(b) Have at least 60 documented hours as an instructor in an EPA-approved building inspector course.

(c) The applicant may substitute 60 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.4.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented experience including asbestos inspections in at least 500,000 square feet of building space in the last three years; or

(b) Have at least 40 documented hours as an instructor in an EPA-approved building inspector course.

(c) The applicant may substitute 40 documented hours of occupational safety, health, and

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environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.4.b.(2)(b) of this Section.

5. Project Designer Discipline.

a. Previous Training.

The applicant shall meet current EPA accreditation requirements for asbestos project designers.

b. Education/Asbestos Work Experience.

The applicants shall meet at least one of the following education/asbestos work experience combinations:

(1) If the applicant possesses either a high school or GED diploma, the applicant shall:

(a) Have documented asbestos project design experience including the design of at least 12 asbestos projects in the last three years; or

(b) Have at least 30 documented hours as an instructor in an EPA-approved asbestos project designer course.

(c) The applicant may substitute completion of 30 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.5.b.(1)(b) of this Section.

(2) If the applicant possesses at least an associate degree from a regionally-accredited college/university, the applicant shall:

(a) Have documented asbestos project design experience including the design of at least six asbestos projects in the last three years; or

(b) Have at least 20 documented hours as an instructor in an EPA-approved asbestos project designer course.

(c) The applicant may substitute 20 documented hours of occupational safety, health, and environmental instruction taught in courses required to meet federal or State regulations for the instructional hours required in Paragraph F.5.b.(2)(b) of this Section.

G. Documentation of Instructor Qualifications.

1. Applicants seeking approval to teach work-practice or hands-on topics or to act as a sole instructor shall submit documentation of training, education, and work experience as required herein.

2. Documentation of Training.

a. The applicant shall submit a copy of initial and subsequent refresher certificates of training from courses approved by the EPA or by an EPA-accredited state, and provide for each course the title, dates of instruction, names of instructors, name, address, and telephone number of the training provider.

b. Instructors shall take refresher training from a training provider not affiliated with the instructor for at least one discipline every year. Instructors teaching multiple disciplines shall alternate among the different disciplines taught.

3. Documentation of Education.

The applicant shall submit a copy of high school, GED, or college or university diploma or the name and address of the conferring institution.

4. Documentation of Asbestos Work Experience.

a. An applicant for instructor of worker or supervisor training courses shall submit a detailed description of job duties and responsibilities as an asbestos worker, foreman, supervisor, or consultant, including all of the following:

- (1) Inclusive dates of employment;
- (2) The name of the employer;
- (3) Types of ACM removed;
- (4) Number of workers supervised;
- (5) Name, address, and telephone number of each different employer; and
- (6) Name of immediate supervisor at each different employer.

b. An applicant for instructor of building inspector, management planner, or project designer training courses shall include all relevant information concerning experience completing inspections, management plans, or project designs, including all of the following:

- (1) Size and location of buildings inspected;
- (2) Descriptions of management plans, projects managed, or projects designed;
- (3) Name, address, and telephone numbers of building owners;
- (4) Name, address, and telephone numbers of all employers; and
- (5) Inclusive dates of employment.

c. Documentation of Instructor Experience.

The applicant shall submit a detailed description of instructor experience, including all of the following:

- (1) Name of training courses taught;
- (2) Topics taught for each course;
- (3) Inclusive dates of each training course;
- (4) Total hours taught for each training course; and
- (5) Name, address, and telephone number of each training organization with which experience is claimed.

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H. Work Practice Topics.

Instructors shall meet the qualifications for instructors listed in Section XIX.F. above in order to teach the following asbestos Work Practice Topics:

1. O&M Worker and Worker Refresher:
 - a. State-of-the-Art Work Practices.
 - b. Hands-on Exercises (initial course only).
2. Worker and Worker Refresher:
 - a. State-of-the-Art Work Practices.
 - b. Hands-on Exercises (initial course only).
3. Supervisor and Supervisor Refresher:
 - a. State-of-the-Art Work Practices.
 - b. Techniques for Asbestos Abatement Activities.
 - c. Hands-on Exercises (initial course only).
4. Management Planner and Management Planner Refresher:
 - a. Evaluation/Interpretation of Survey Results.
 - b. Hazard Assessment.
 - c. Developing an Operations and Maintenance (O&M) Plan.
 - d. Record Keeping for the Management Planner.
 - e. Assembling and Submitting the Management Plan.
5. Building Inspector and Building Inspector Refresher:
 - a. Pre-inspection Planning and Review of Previous Inspection Records.
 - b. Inspecting for Friable and Non-friable Asbestos Containing Materials (ACM).
 - c. Assessing the Condition of Friable ACM.
 - d. Bulk Sampling/Documentation of Asbestos in Schools.
 - e. Record Keeping and Writing Inspections Reports.
 - f. Field Trip.
6. Project Designer and Asbestos Project Designer Refresher:

- a. Safety System Design Specifications.
- b. Designing Abatement Solutions.
- c. Budgeting/Cost Estimation.
- d. Writing Abatement Specifications.
- e. Preparing Abatement Drawings.
- f. Occupied Buildings.
- g. Field Trip.

I. Course Approval.

1. The Department may base approval of an initial or refresher training course in any discipline in whole or in part on the provider's compliance with the requirements of Section XIX.C., the accuracy and applicability of the materials submitted pursuant to this Section, observation by a Department representative of an actual presentation of the course, or approval from the EPA, an EPA-accredited state, or a state having reciprocity with the Department.

2. The training provider shall submit all of the following information to the Department not less than 30 days prior to the initial presentation of the course within the State:

- a. Course sponsor's name, address, and telephone number;
- b. The course curriculum;
- c. Length of training in days;
- d. Description of amount and type of hands-on training;
- e. Topics covered in the course;
- f. A copy of all course materials, including student manuals, student handouts, instructor notebooks, lecture outlines, etc;
- g. A detailed statement regarding the length, format, and development of examinations, and copies of actual examinations;
- h. A description of procedures used to administer examinations and to ensure their security;
- i. Instructor names, documentation of qualifications (including resumes), and the subject areas that each instructor will teach;
- j. Description and samples of numbered certificates that will be issued to students who successfully complete the course, and a statement regarding the manner in which certificate numbers are generated; and
- k. Other applicable information requested by the Department.

3. The provider of any training course presented in the State shall allow Department representatives to attend, monitor, and evaluate the course without charge and without advance notice.

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4. The provider of any training course approved by the Department shall notify the Department within ten days of any changes in course topics, materials, and instructors. The training provider shall provide notification in writing and shall submit appropriate documentation for Department approval.

5. The Department reserves the right to require additional training as appropriate, including training specific to this regulation, air sampling strategies, or roofing projects.

6. The Department shall withdraw approval of a training course if it determines that:

a. The course no longer meets the requirements of this regulation or the EPA Model Accreditation Plan.

b. Approval from the EPA, an EPA-accredited state, or a state with whom the Department has reciprocity has been withdrawn.

J. Periodic Audits.

1. The Department may conduct unannounced audits of any training course to ensure compliance with all requirements of this regulation.

2. All in-State training providers shall maintain the approval status of their training courses by submitting to periodic on-site audits by the Department. Such audits may be unannounced. In-State training courses that have been audited by a state having a written reciprocal agreement with the Department regarding periodic audits may be exempted from the periodic audit rule.

3. The Department shall conduct periodic audits for the purpose of verifying that:

a. The training course complies with all requirements of this regulation;

b. The training course content has been updated and is current with state-of-the-art methods and technology available in the asbestos abatement and management industry;

c. The training course meets instructor qualifications and performance standards, training course administration standards, hands-on training standards, and instructor-to-student and workstation-to-student ratios as established by the Department;

d. The training course sponsor has maintained training-related records as required in Paragraph C.9. of this Section; and

e. Previously-approved curriculum materials and instructors are subject to the training course standards as defined by the Department.

4. All training course sponsors shall allow, at no charge, representatives from the Department to attend all or any part of any training course for the purpose of conducting periodic audits. Training course sponsors shall not restrict access to any part of a training course for which the Department is conducting an on-site audit. As part of the audit process, training course sponsors shall make records that are required by this regulation available to the Department upon request.

5. As a result of a periodic on-site audit of any training course previously approved by the Department, the Department may revoke or suspend its approval; or, for training courses that have been approved by other federal or state approval agencies, the Department may refuse to accept certificates of training if any of the following deficiencies are noted during the audit:

a. The course is not in compliance with this regulation;

- b. The training provider misrepresents the extent of the training course's approval; or
- c. The Department finds evidence of falsification of any records required by this regulation.

6. The Department shall not recognize a certificate of training issued by any in-State training course that has had its acceptance suspended or revoked as a result of an on-site audit until a subsequent audit shows that the cause of suspension or revocation has been corrected.

7. The Department shall not recognize a certificate of training issued by any training course that has had its approval, acceptance, or certification revoked by any other state or federal approval agency until the approval has been reinstated by the revoking agency.

K. Training Course Fee Schedule.

- 1. Initial approval for each training course license - \$350.00 per day per course.
- 2. Annual license renewal for Department-approved training courses - \$200.00 per course.
- 3. Each course license is valid for an entire year, regardless of the number of times the course is taught during the year.
- 4. Fees shall not be refunded if a training course is denied a license per this regulation.
- 5. Failure to pay annual training course license renewal fees may, after a hearing in accordance with the provisions of this regulation, result in the course license being revoked.

SECTION XX. INDUSTRIAL MANUFACTURING AND ELECTRICAL GENERATING FACILITIES.

A. Applicability.

- 1. In lieu of requirements described in other sections of this regulation except as specified herein, the requirements of this Section shall apply to the owner of an industrial manufacturing or electrical generating facility that has obtained a group license for facility employees or employees of the designated long-term in-house contractor.
- 2. Unless otherwise specified herein, the applicable requirements of this regulation shall apply to any asbestos projects involving RACM, regardless of the size of the project.
- 3. No person shall engage in any asbestos project or abatement involving RACM unless licensed to do so by the Department.
- 4. Industries that choose not to obtain a facility group license or who hire companies or individuals not covered under the facility group license shall satisfy all applicable requirements described in other sections of this regulation.

B. Training.

Employees of industrial manufacturing or electrical generating facilities and of such facilities' long-term in-house contractors who perform asbestos abatement projects shall satisfy the training requirements as specified below:

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1. Employees who perform OSHA-designated Class I and II work not subject to OSHA's exceptions shall receive training consistent in length and curriculum with 40 CFR Part 763, Subpart E, Appendix C, as amended, and any subsequent amendments and editions. Employees who perform OSHA-designated Class III work not subject to OSHA's exceptions shall receive training consistent in length and curriculum with 40 CFR 763.92(a)(2).

2. All training conducted for the purpose of satisfying B.1 of this Section shall be conducted by a person who meets the applicable instructor qualifications of the Training Section of this regulation.

C. License Application.

1. Each person covered under a facility group license shall successfully complete a Department-approved initial or refresher training course specific to the discipline, and at the conclusion of the course, shall successfully pass an examination, when applicable, with a score of 70 percent or above.

2. Each facility seeking a group license shall submit a completed application to the Department in a format designated by the Department. The application must state the type of license for which the application is being made and must include the following information:

a. Name, mailing address, and street address of the industrial manufacturing or electrical generating facility;

b. Name, title, and telephone number of a responsible company official;

c. Name of the designated long-term in-house contractor, when applicable; and

d. Name, Social Security number, discipline, training provider or approved instructor, and, when applicable, examination date of most recent training certificate for each person to be included under the license.

e. An owner shall notify the Department quarterly of any change in facility name, contact person, mailing address, street address, telephone number, long-term in-house contractor, and/or personnel covered by the group license.

3. Acceptable documentation of training may be requested by the Department and shall include:

a. An original certificate issued by the training course provider that meets the requirements specified in this regulation; or

b. A valid, original license or accreditation issued by a state that has a reciprocal arrangement with the Department (photocopies or telephone facsimile copies shall not be accepted); or

c. A letter verifying successful completion of training that is sent directly to the Department from the approved training instructor.

4. Duration of a License.

a. A license shall automatically become invalid if an instrument of payment is returned for insufficient funds.

b. A group license shall expire one year from the process date, unless the Department suspends or revokes the license at an earlier date. No person covered by a group license shall engage in any asbestos project after one year from the examination date printed on his or her most recent training certificate regardless of the expiration date of the group license.

D. Continuing Education

1. After successful completion of an approved initial training course, each employee to be covered under a group license shall thereafter successfully complete a Department-approved initial or refresher training course specific to the discipline, and, at the conclusion of each course shall pass an examination with a score of 70 percent or above where applicable.

2. If more than 12 months but fewer than 24 months have elapsed since completing an initial or refresher training course, an applicant shall successfully complete either a refresher training course or an initial training course.

3. If more than 24 months have elapsed since successfully completing an initial or refresher training course, an applicant shall complete another initial training course.

E. Fees.

1. No application will be processed unless accompanied by the required fee.

2. Departmental receipt and deposit of fees submitted with an application shall in no way indicate approval of the application or guarantee the Department's issuance of a license.

3. Fees shall not be refunded if a license is denied.

F. Group License Fee Schedule.

The fee for a group license shall be as follows:

1. Up to 10 people - \$ 25.00 minimum fee

2. 11 to 20 people - \$ 2.50 per person

3. 21 to 50 people - \$ 5.00 per person

4. 51 to 90 people - \$ 7.50 per person

5. 91 persons or more - \$ 500.00 maximum fee

6. The minimum fee for a group license is \$25.00 and the maximum is \$500.00.

G. Project Fees.

1. The Department shall collect project license fees for all RACM being removed and for previously non-regulated ACM rendered regulated by use of destructive removal techniques such as chipping, grinding, sawing, abrading, drilling, or extensive breaking.

2. Abatement project fees for RACM are calculated at 10 cents per linear, cubic, or square foot, with a minimum fee of \$25.00 and a maximum fee of \$1,000.00.

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3. The Department will not issue an abatement project license for a renovation or demolition until all requested information has been submitted and reviewed and all applicable fees have been paid.

4. Fees will not be refunded on projects for which the Department has issued an asbestos project license.

5. An abatement project license that has been issued shall automatically become invalid if an instrument of payment is returned for insufficient funds.

H. Action on an Application.

Within 15 calendar days after receiving an application, the Department will acknowledge receipt of the application and notify the applicant of any deficiency in the application. Within 30 calendar days after receiving a completed application, including all additional information requested, the Department will issue a license or deny issuance of the application.

I. Conditions and Generic Alternatives.

In granting a license, the Department may impose reasonable terms and conditions to ensure continuous compliance with the requirements of this regulation.

J. Asbestos Project General Information.

1. Prior to beginning a renovation or demolition operation at a facility, the owner/operator shall ensure that a building inspection is performed to identify the presence, location, and estimated quantity of ACM that may be disturbed by the work activity. The building inspection shall be performed by a person licensed as a building inspector or management planner.

2. The building inspector or management planner shall comply with the Building Inspection Section of this regulation.

K. Notification.

1. For NESHAP renovation projects, refer to the NESHAP Project Section of this regulation.

2. For demolitions, refer to the Demolition Section of this regulation.

3. For small, minor, and O&M renovation projects, either:

a. Provide the Department with written notification/application prior to any abatement and pay all applicable fees.

(1) Deliver the notification by U.S. Postal Service or commercial delivery service, facsimile transmission, by hand or by other methods deemed acceptable by the Department.

(2) Postmark or deliver the notice at least four working days for small projects before commencing asbestos stripping or removal work or any other activity begins that would break up, dislodge, or similarly disturb RACM. For minor and O&M projects, postmark or deliver the notice prior to commencing abatement activities.

(3) Update the notification when any previously-notified information changes and pay additional project fees as necessary.

(4) Notify the Department by telephone and follow up in writing as soon as possible, but not later than, the originally notified start date when a project for which notification was sent has been canceled.

(5) The Department may waive the five-calendar-day prior notice requirement on a case-by-case basis.

b. Maintain a log of all small, minor, or O&M projects performed during a quarter, report them to the Department within 30 calendar days of the end of the quarter, and pay applicable project fees. The log shall include but is not limited to: the name and address of the facility being abated, amount and type of ACM removed, date(s) of the removal, names of individuals who performed the abatement, the temporary waste storage location, and the name of the landfill used for disposal.

4. The owner/operator shall notify the Department by telephone and follow up in writing as soon as possible before, but not later than, the notified start date when a project has been canceled.

5. A licensed asbestos project designer shall prepare and implement the written design for each abatement renovation project involving the removal of greater than 3,000 square, 1,500 linear, or 656 cubic feet of RACM in a facility to be reoccupied. However, all projects shall be designed in accordance with the requirements of 40 CFR 763.90(g), as amended, and any subsequent amendments and editions, and this regulation.

6. The disposal requirements of this regulation shall be applicable to asbestos-containing and asbestos-contaminated materials for any abatement activity.

L. Emergency Operation Documentation.

1. For an emergency operation, the owner/operator shall submit project notification as early as possible before, but not later than, the working day following the emergency operation.

2. The facility owner shall notify the Department in writing of the date and hour that the emergency occurred; a description of the sudden, unexpected event; and an explanation of how the event caused an unsafe condition, public safety or health threat, equipment damage, or would impose an unreasonable financial burden. The owner shall submit this information with the project notification as required in this Section.

M. Work Practices.

1. NESHAP projects performed at an industrial manufacturing or electrical generating facility by individuals covered under the facility's group license shall satisfy the work practice requirements of 40 CFR 61.145, as amended, and any subsequent amendments and editions, and shall ensure that: wet removal methods are used; no visible emissions are released to the outside air; and all asbestos waste is sealed in leak-tight containers and disposed of at a landfill permitted to accept asbestos waste.

2. Any small or minor asbestos project or any O&M activity performed at an industrial manufacturing or electrical generating facility shall be subject to the work practice requirements of the Small Project, Minor Project, or O&M Project Sections whenever feasible. When such work practice requirements are not feasible or when alternate Federal OSHA and EPA work practice standards are used, the owner/operator shall perform work in such a way to provide assurance of RACM containment.

3. The use of glovebags must be in accordance with the requirements of OSHA 29 CFR 1926.1101.

4. The owner/operator shall ensure that contaminated water is filtered through a five micron or smaller filter and discharged to a sanitary sewer system. No contaminated or filtered water shall be allowed to leak or drain outside of the work area.

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5. The Department may, on a case-by-case basis, approve alternative procedures for work practices, control of emissions from an asbestos abatement project, or air monitoring, provided the owner/operator submits a written description of the alternative procedure to the Department prior to beginning work and demonstrates to the satisfaction of the Department that compliance with the prescribed procedures will not be practical or feasible and that the proposed alternative procedures provide equivalent protection from asbestos exposure.

6. Legible copies of Departmental letters of approval for alternative work practices shall be kept at the project site and available for inspection for the duration of abatement.

N. Exemption from Wetting for Any Sized Project.

The requirements of the Exemption From Wetting Section of this regulation shall apply.

O. Disposal.

The requirements of the Disposal Section of this regulation shall apply except as follows:

1. In lieu of locking metal dumpster doors and tops, the dumpster containing asbestos waste may be kept in a secured area to which access is controlled.

2. Asbestos waste may be kept at the site until a sufficient quantity has accumulated for a full shipment. In this instance, the facility owner shall submit a copy of a completed waste shipment record or other shipping manifest to the Department within 45 working days of shipment of the waste.

P. Requirements for Training Courses and Training Instructors.

In order for initial or refresher training subject to the requirements of 40 CFR Part 763 to be acceptable as a basis for licensing pursuant to this Section, the course curriculum and instructors must meet the applicable curriculum criteria in the Training Section of this regulation and be approved by the Department.

Q. The requirements of the Reprimands, Suspensions, and Revocation Section of this regulation shall apply.

R. The requirements of the Contested Cases Section of this regulation shall apply.

S. The requirements of the Records Section of this regulation shall apply.

T. The requirements of the Other Requirements Section of this regulation shall apply.

SECTION XXI. REPRIMANDS, SUSPENSIONS AND REVOCATION.

The Department may reprimand any licensee or revoke or suspend any license based upon violation of any requirement stated herein. Reasons for reprimand, suspension, or revocation may include, but are not limited to, falsification or known omission of any written submittal required as part of this regulation, submission of fraudulent information or documentation, omission or improper use of work practices, improper disposal of ACM, or spread of asbestos emissions beyond the containment area.

SECTION XXII. CONTESTED CASES

A. A Department decision involving the issuance, denial, renewal, suspension, or revocation of a permit or license may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

B. Any person to whom an order or civil penalty is issued may appeal it pursuant to applicable law, including S.C. Code Title 44, Chapter 1 and Title 1, Chapter 23.

SECTION XXIII. RECORDS.

Each licensed asbestos owner/operator shall retain, for at least three years after their issuance, all records required herein unless otherwise stated. These records shall be made available to the Department for review upon request.

SECTION XXIV. OTHER REQUIREMENTS.

A. The requirements of this regulation shall in no way be construed to relieve the owner/operator from compliance with other regulatory requirements or contractual agreements that may be more restrictive.

B. The Department reserves the right to assess additional fees for licensing, training course auditing, and abatement activities, should enabling legislation be enacted.

SECTION XXV. SEVERABILITY CLAUSE.

The provisions of Sections I through XXV of this regulation must be construed as separate provisions. If a provision is judged to be invalid in a court of law of this State, the court's decree shall apply only to the provision and action specified and shall have no effect on any other provision unless stated in the court's decree. The invalidity does not affect other provisions or applications of the Section which may be given effect without invalid provision or application and pursuant to this requirement, the provisions of these Sections are severable.

Fiscal Impact Statement:

The Department estimates that no additional cost will be incurred to the state or its political subdivisions by the implementation of this amendment; therefore no additional state funding is being requested. Existing staff and resources will be utilized to enforce the amendment to the regulation.

Statement of Need and Reasonableness:

This statement of need and reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF REGULATION: Amendment to Regulation 61-86.1, Standards of Performance for Asbestos Projects.

Purpose of Regulation: This amendment will result in clarification of many sections of the regulations, making them more specific, better organized, the regulation's intent more clear, ensure compliance and maintain conformity with Federal requirements and standards, give purpose and scope to the rest of the regulation, clarify certain sections of the regulation to improve compliance rates, and reorganize parts of the regulation to be more user-friendly. Language in the regulation has also been updated to correlate with changes in the administrative appeals process pursuant to 2006 S.C. Act 387.

Legal Authority: The legal authority for Regulation 61-86.1, Standards of Performance for Asbestos Projects, is S.C. Code Sections 44-1-140; 48-1-30; and 44-87-10, et seq. of the 1976 South Carolina Code of Laws, as Amended.

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Plan for Implementation: The amendment will take effect upon approval by the Board of the South Carolina Department of Health and Environmental Control, the South Carolina General Assembly, and publication in the South Carolina State Register. The amendment will be implemented in the same manner in which the existing regulation is implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The amendment is necessary to update and clarify certain sections of the regulation to be consistent with the Federal Regulation where applicable, clarify certain sections of the regulation to improve compliance rates, and to reorganize parts of the regulation to be more user-friendly. Further, language in the regulation will be updated to correlate with changes in the administrative appeals process pursuant to 2006 S.C. Act 387.

DETERMINATION OF COSTS AND BENEFITS:

There will be no increased cost to the State or its political subdivisions as a result of these amendments. The standards to be adopted are already effective and applicable to the regulated community as a matter of Federal law. The amendments will benefit the regulated community by clarifying the regulations and increasing their ease of use.

UNCERTAINTIES OF ESTIMATES:

There are no uncertainties associated with the amendments to R.61-86.1.

EFFECT ON ENVIRONMENT AND PUBLIC HEALTH:

It is expected that the amendment of R.61-86.1 will improve the regulated community's understanding of the regulation's requirements, thereby, preventing exposure of the public and the environment to potentially dangerous asbestos containing materials, which might otherwise be removed and disposed of in an improper manner.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED:

Licensing of demolition projects helps ensure that asbestos containing materials identified prior to demolition are handled and disposed of properly and that the projects are conducted in accordance with the requirements of the asbestos regulations. Training Providers are audited to ensure that the course material and curriculum meet specific criteria and that individual instructors are currently qualified to administer mandatory training to asbestos abatement personnel in each work practice topic or discipline. Lack of a clear, well organized regulation could result in an increase in non-compliance.

Statement of Rationale:

This amendment is to provide additional clarity and specificity to the existing regulations. The Department found that it was necessary to amend Regulation 61-86.1, Standards of Performance for Asbestos Projects, which was last updated on June 28, 2002, in order to clarify many parts of the regulation that members of the regulated community found to be ambiguous. The Department found that parts of the regulation needed to be removed or updated because they could be misinterpreted or had become unnecessary in some cases. The Department also found that parts of the regulation needed to be reorganized to make information easier to locate for those using the regulation. Because the regulation was being revised, the Department also took the opportunity to add the required language related to the recently changed appeals process.

The amendment is based on staff judgment and stakeholder comments and address questions from the regulated community regarding particular sections of the existing regulations.

Document No. 3173
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Section 59-150-370

62-900.85-140. South Carolina HOPE Scholarship

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-900.85-140 of the SC HOPE Scholarship Program. Revisions to the existing regulation for the SC HOPE Scholarship Program are being considered to clarify the policies and procedures for administering the program. The proposed amendment will make the Scholarship regulation consistent with recently approved legislation, Act 115, approved during the 2007 legislative session: SC HOPE scholarships are authorized in an amount of up to two thousand five hundred dollars, plus a three hundred dollar book allowance to cover the cost of attendance, as defined by the Commission on Higher Education by regulation, during the first year of attendance only, to an eligible student attending a four-year public or independent institution as defined in subsection who does not also qualify for a LIFE Scholarship or a Palmetto Fellows Scholarship.

The proposed amendment will also make the Scholarship regulation consistent with recently approved legislation, Act 103, approved during the 2007 legislative session: SC HOPE recipients who are convicted or pled guilty or nolo contendere of their second or subsequent alcohol related offense would lose their SC HOPE Scholarship if convicted or pled guilty or nolo contendere before the year begins, and lose their LIFE Scholarship for the following year if they have already received SC HOPE funds for the academic year in which they were convicted.

Instructions: Amend or leave as is the following sections as indicated below

Section:	Changes:
62-900.85	No changes
62-900.86	No changes
62-900.90	No changes
62-900.95	Adding the word second to the phrase “alcohol and drug related offenses”.
62-900.100	No changes
62-900.105	No changes
62-900.110	No changes
62-900.111	No changes
62-900.115	No changes
62-900.120	No changes
62-900.125	Change award amount from two thousand six hundred fifty to two thousand eight hundred dollars. Change book allowance amount from \$150 to \$300. Add the word second to the phrase “alcohol and drug related offenses”.
62-900.130	Change award amount from two thousand six hundred fifty to two thousand eight hundred dollars. Change book allowance amount from \$150 to \$300.
62-900.135	No changes
62-900.140	No changes

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Text:

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62-900.140	Suspension or Termination of Institutional Participation

62-900.85 Purpose of the SC HOPE Scholarship Program

The South Carolina HOPE Scholarship was established under the South Carolina Education Lottery Act in 2001 and amended by Act 95 during the 2005 legislative session. Act 356 authorizes the Commission on Higher Education to promulgate regulations for administration of the SC HOPE Scholarship Program. The purpose of the SC HOPE Scholarship Program is to provide funding to first-time entering freshmen who do not qualify for the LIFE or Palmetto Fellows Scholarships.

62-900.86 Funding

A. Funds made available for SC HOPE Scholarships under the South Carolina Education Lottery Act shall be included in the annual appropriation to the Commission on Higher Education. This program is dependent upon the annual proceeds generated by the Lottery. The Commission on Higher Education shall award funds as SC HOPE Scholarships to eligible students.

62-900.90 Program Definitions

A. "Academic year" is defined as the twelve month period during which a full-time student is expected to earn thirty credit hours. The period of time used to measure the academic year will consist of fall, spring, and summer terms or spring, summer, and fall terms (or its equivalent).

B. "Bachelor's degree program" is defined as a program of study leading to a bachelor's degree as defined by the U.S. Department of Education for participation in federally funded financial aid programs.

C. "Book allowance" shall mean funds that may be applied to the student's account for expenses towards the cost-of-attendance including the cost of textbooks.

D. "Cost-of-attendance" as defined by Title IV Regulations and may include tuition, fees, living expenses, and other costs such as costs related to disability or dependent care.

E. "Degree-seeking undergraduate student" is defined as any full-time student enrolled in a bachelor's degree program at an eligible institution.

F. "Eligible institution" shall be defined as a public or independent bachelor's level institution.

G. "Felonies" shall be defined as crimes that are classified under State Statute (Section 16-1-10) and that typically require imprisonment for more than one year.

H. "Freshman year" shall mean the first academic year the student matriculates in an institution after high school graduation or completion of an approved home school program.

I. "Full-time student" shall mean a student who has matriculated into a bachelor's degree program and who enrolls full-time at the home institution, usually fifteen semester credit hours for fall and spring terms or twelve credit hours for fall, eight credit hours for winter, and twelve credit hours for spring trimester terms. In order for the student to be eligible for Scholarship disbursement, the student must be enrolled full-time as stipulated by Title IV Regulations, except that credit hours may not include remedial/developmental and continuing education courses.

J. "High school" is defined as a high school located in South Carolina, an approved home school program as defined in the State Statute, (Sections 59-65-40, 45, and 47) or a preparatory high school located outside of the state while the student is a dependent of a legal resident of South Carolina who has custody or pays child support and college expenses of the dependent high school student in accordance with State Statute (Section 59-112-10). A "preparatory high school" (out-of-state) is defined as a school recognized by the state in which the school is located to offer curricula through the twelfth grade and prepares students for college entrance.

K. "Home institution" shall mean the institution where the student is currently enrolled as a degree seeking student and may be eligible for financial aid at the same institution.

L. "Independent institutions" are defined, for the purposes of the SC HOPE Scholarship Program, as those four-year institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that an "independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools;" or an independent bachelor's level institution chartered before 1962 whose major campus and headquarters are located within South Carolina; or an independent bachelor's level institution who had a major campus and headquarters located within South Carolina and was accredited by the Southern Association of Colleges and Schools as of March 17, 2004." Institutions whose sole purpose is religious or theological training or the granting of professional degrees do not meet the definition of 'independent institution' for purposes of this chapter. Independent two-year institutions are not eligible for participation in this program.

M. "Initial college enrollment" shall mean the first time the student matriculates into a postsecondary, degree-granting institution after high school graduation. The terms of eligibility are based upon initial college enrollment and continuous enrollment. This means that any break in enrollment (excluding summer) will count against the maximum terms of eligibility.

N. "Military mobilization" is defined as a situation in which the U.S. Department of Defense orders members of the United States Armed Forces to active duty away from their normal duty assignment during a time of war or national emergency.

O. "Misdemeanor offenses" shall be defined as crimes that are classified under State Statute (Section 16-1-100), less serious than felonies, and are typically punishable by fine or imprisonment for less than one year. A complete listing is located in title 16 of State Statute. Examples of alcohol and/or drug misdemeanor offenses in South Carolina include but are not limited to possession of alcohol under the age of 21, possession of marijuana/illegal drugs, open-container, transfer of alcohol to a person under 21, providing false information as to age (fake ID), etc.

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P. "Multihandicapped student" shall be defined as a student who, in addition to being visually or hearing impaired, has at least one additional disabling condition that qualifies the student to receive specialized postsecondary education.

Q. "Public institutions" are those four-year bachelor's degree-granting institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates "public higher education shall mean state- supported education in the postsecondary field." Public two-year institutions and technical colleges are not eligible for participation in this Program.

R. "Remedial/developmental coursework" shall mean sub-collegiate level preparatory courses in English, mathematics, and reading or any other course deemed remedial by the institution where the course is taken.

S. "South Carolina resident" shall be defined as an individual who satisfies the requirements of residency in accordance with the State of South Carolina Statute for Tuition and Fees, Section 59-112-10, and all related guidelines and regulations promulgated by the Commission on Higher Education as determined by the institutional residency officer each academic year.

T. "Transfer student" shall be defined as a student who has changed enrollment from one institution to an eligible institution.

62-900.95 Student Eligibility

A. To be eligible for a SC HOPE Scholarship, the student must:

1. Be a U.S. citizen or a legal permanent resident that meets the definition of an eligible non-citizen under State residency statutes;

2. Be a South Carolina resident for in-state purposes at the time of high school graduation and at the time of enrollment at the institution, as set forth by Section 59-112-10 and be either a member of a class graduating from a high school located in this State, a home school student who has successfully completed a high school home school program in this State in the manner required by law, or a student graduating from a preparatory high school outside this State, while a dependent of a parent or guardian who is a legal resident of this State and has custody of the dependent according to State Statute, Section 59-149-50A;

3. Earn a cumulative 3.0 grade point average (GPA) based on the Uniform Grading Scale (UGS) upon high school graduation. No other grading policy will be allowed to qualify for the SC HOPE Scholarship. Grade point averages must be reported to two decimal places (minimum) and may not be rounded. For example, a student who earns a 2.99 GPA is not eligible. A student who earns a 3.00 GPA or above is eligible. Institutions shall use the final cumulative GPA as reported by the high school on the official high school transcript;

4. Be admitted, enrolled full-time, and classified as a degree-seeking undergraduate student in an eligible institution in South Carolina;

5. Certify that he/she has never been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* to any felonies and/or any second or subsequent alcohol/drug related misdemeanor offenses under the laws of this or any other state or under the laws of the United States by submitting a signed affidavit each academic year to the institution testifying to the fact. However, a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or *nolo contendere* of a second alcohol or other drug related misdemeanor offense is ineligible for the next academic year of enrollment at an eligible institution after the date of the adjudication, conviction or plea. If the adjudication, conviction, or plea occurs during the academic year after the student has already submitted a signed affidavit to the institution, the student is still eligible for the Scholarship for the remainder of the academic year. However, the student will not be eligible to receive the

LIFE Scholarship the following fall, spring, and summer terms (or their equivalent), even if all other eligibility requirements have been met. If a student completes a pretrial intervention program and has his/her record expunged, the conviction will not affect Scholarship eligibility;

6. For a home school graduate to be eligible for the SC HOPE Scholarship, the student must be a member of an approved South Carolina homeschool program as defined in the State Statute (Sections 59-65-40, 45, and 47) that provides a GPA on an official transcript upon high school graduation based on the Uniform Grading Scale. No other grading policy will be allowed to qualify for the SC HOPE Scholarship. Grade point averages must be reported to two decimal places (minimum) and may not be rounded; and

7. In order to meet the GPA requirement, a student who attended an out-of-state preparatory high school or graduated from a SC high school prior to the full implementation of the Uniform Grading Scale in 2004 must request that an official designated by the Commission on Higher Education convert the student's grades to the UGS (if the high school had not already converted to the UGS). Any fees and requirements associated with the conversion are the responsibility of the student. These students must meet all other eligibility criteria, including SC residency requirements.

B. Any credit hours attempted or earned before high school graduation, hours exempted by examination, or Advanced Placement (AP) credit hours do not count against the terms of eligibility.

C. Students who complete their high school graduation requirements prior to the official graduation date reported on the final high school transcript may be eligible to receive the SC HOPE Scholarship pending the approval of the Commission on Higher Education (CHE). The institutional representative must complete and submit an Early Graduation Application Form and all appropriate documentation as deemed necessary by CHE for each student by the established deadline. The student must request and submit a letter from the high school principal verifying that he/she has met all graduation requirements along with an official high school transcript.

D. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on active duty. The credit hours earned will not count against the terms of eligibility.

E. Early graduates who enroll mid-year and are classified as degree-seeking will officially begin their initial college enrollment.

F. SC HOPE Scholarship funds may not be applied to the costs of continuing education or remedial/developmental courses. Twelve credit hours of the course load must be nonremedial/developmental and non-continuing education courses in order to receive SC HOPE Scholarship funds.

G. Students receiving a SC HOPE Scholarship are not eligible for a LIFE Scholarship, Palmetto Fellows Scholarship or Lottery Tuition Assistance.

H. Students who meet all eligibility requirements for the SC HOPE Scholarship are eligible to receive Scholarship funds for the freshman year of attendance only.

I. All documents required for determining SC HOPE Scholarship eligibility must be submitted to the institution by their established deadline(s). Students must submit official transcripts from all previous and current institutions, which provide evidence to determine initial college enrollment.

62-900.100 Duration of Award

A. Students are eligible to receive the SC HOPE Scholarship for no more than two terms (or its equivalent) during the freshman year of attendance only.

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B. The maximum number of terms of eligibility is based on the student's initial college enrollment with the exception of credit hours earned during the summer session immediately prior to the student's initial college enrollment.

C. If a student enrolls mid-year (spring term) and receives the SC HOPE Scholarship during that term, then qualifies to receive the LIFE Scholarship at the end of the summer term, the student will not be eligible to receive the SC HOPE Scholarship for the next term. If the student does not meet the requirements to qualify for the LIFE Scholarship, then the student may receive the SC HOPE Scholarship the next term of eligibility.

62-900.105 Transfer Students

A. A student who transfers from one institution to an eligible institution during the freshman year of attendance is eligible to receive the SC HOPE Scholarship if the student met the eligibility requirements as stated in the "Student Eligibility" Section at the beginning of the academic year.

B. A student who transfers from a two-year or technical institution to an eligible four-year institution who enrolled in remedial courses during the freshman year may be eligible to receive the SC HOPE Scholarship. The terms of eligibility to receive Scholarship funds must not include the period of time the student was enrolled in remedial courses at a two-year or technical institution, unless the student completed at least twelve credit hours of non-remedial course work each term of enrollment during the freshman year. The student will be eligible to receive the Scholarship for the maximum number of terms of eligibility following completion of remediation if the student was eligible to receive the Scholarship upon high school graduation. If the student requires more than one academic year of remedial/developmental coursework, then he/she will not be eligible for the Scholarship after completion of remediation. If the student was not eligible for the Scholarship upon high school graduation, the student will not be eligible for the Scholarship after completion of remediation.

62-900.110 Students with Disabilities

A. Students who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in the "Student Eligibility" Section except for the full-time enrollment requirement, if approved by the Disability Services Provider. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid prior to the freshman year verifying that the student is approved to be enrolled in less than full-time status.

C. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 may receive the maximum number of available terms of eligibility as stated in the "Duration of Award" Section.

D. In order to be eligible for the SC HOPE Scholarship, students who no longer qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must comply with all requirements set forth under the "Student Eligibility" Section.

62-900.111 Military Mobilization

A. Service members who are enrolled in college and are affected by military mobilizations will not be penalized for the term(s) they are required to withdraw after the full refund period based on the institutional policies and procedures. Institutions are strongly encouraged to provide a full refund of required tuition, fees and other institutional charges or to provide a credit in a comparable amount against future charges for students who are forced to withdraw as a result of military mobilization. Additionally, the term(s) that the service member is mobilized will not count against the maximum terms of eligibility. The service member

shall be allowed to receive the unused term(s) while mobilized during the succeeding summer term or at the end of the maximum terms of eligibility based on initial college enrollment. The service member must re-enroll in an eligible institution within twelve months upon their demobilization and provide official documentation to verify military deployment to the institutional Financial Aid Office upon re-enrollment. Reinstatement will be based upon the service member's eligibility at the time he/she was mobilized. If the service member re-enrolls after the twelve month period, the service member must submit an Appeal Application to the Commission on Higher Education by the established deadline in order to be considered for reinstatement.

B. Service members who are enrolled in college and are mobilized for an entire academic year may receive the Scholarship for the next academic year, if they met the "Student Eligibility" requirements at the time of high school graduation. Service members who did not use the SC HOPE Scholarship funds/terms of eligibility during this period due to military mobilization shall be allowed to receive Scholarship funds during the succeeding summer term and/or at the end of the maximum terms of eligibility based on initial college enrollment.

C. Service members who are enrolled in college and are mobilized for one academic term and did not use SC HOPE Scholarship funds/terms of eligibility during this period shall be allowed to receive one term of Scholarship funds during the succeeding summer or one term at the end of the maximum terms of eligibility based on initial college enrollment.

D. In order to receive the SC HOPE Scholarship for summer school for the unused term(s), the service member must enroll in twelve credit hours during the succeeding summer term at the home institution.

E. The home institution will be responsible for receiving verification of military mobilization status and terms of eligibility based on the service member's initial college enrollment.

F. Service members of the United States Armed Forces will not be penalized for any credit hours earned while on military mobilization. The credit hours will not count against their terms of eligibility.

62-900.115 Refunds or Repayments

A. In the event a student who has been awarded a SC HOPE Scholarship withdraws, is suspended from the institution, or drops below full-time enrollment status during any term of the academic year, institutions must reimburse the SC HOPE Scholarship Program for the amount of the Scholarship for the term(s) in question pursuant to the refund policies of the institution. Collection is the responsibility of the institution.

B. In the event a student withdraws or drops below full-time status after the institution's refund period and therefore must pay tuition and fees for full-time enrollment, the Scholarship may be retained pursuant to the refund policies of the institution.

62-900.120 Appeals Procedures

A. The Commission on Higher Education shall define the appeals procedures.

B. Students who did not receive the maximum number of terms of eligibility for the Scholarship at the end of the first academic year due to an extenuating circumstance may request an appeal with the Commission on Higher Education.

C. The Commission on Higher Education will allow a student to submit only one appeal at the end of the first academic year based on an extenuating circumstance.

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D. A completed appeal's application must be filed with the Commission on Higher Education by the established deadline of the academic year the Scholarship is requested. The student must provide a completed application for appeal, a letter requesting an appeal describing the extenuating circumstance, official transcripts from all prior institutions, and any other supporting documentation to substantiate the basis for the appeal.

E. The SC HOPE Scholarship shall be suspended during the appeal period, but will be awarded retroactively if the appeal is granted.

F. The Appeals Committee's decision is final.

62-900.125 Institutional Policies and Procedures for Awarding

A. SC HOPE Scholarship awards are to be used only for payment toward the cost-of-attendance as established by Title IV regulations. The award amount shall not exceed two thousand eight hundred dollars (includes \$300 book allowance) during the freshman year only. Half shall be awarded during the fall term and half during the spring term (or its equivalent). The SC HOPE Scholarship in combination with all other gift aid, including federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

B. Eligible institutions shall provide an award notification to eligible students that will include the book allowance and also contain the terms and conditions of the Scholarship. Institutions will notify students of all adjustments in Scholarship funds that may result from an over award, change in eligibility, change in the student's residency, change in financial status or other matters.

C. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

- (1) Award notification
- (2) Institutional disbursement to student
- (3) Student's residency status
- (4) Refund and repayment (if appropriate)
- (5) Enrollment and curriculum requirements
- (6) Affidavit documenting that the student has never been convicted of any felonies and/or any second or subsequent alcohol/drug related misdemeanor offenses within the past academic year as stated under the "Student Eligibility" Section
- (7) High school transcript(s) verifying high school graduation or home school completion date and cumulative grade point average
- (8) Verification from institutional disability service provider of student's disability and approval of reduced course-load requirement (if appropriate)
- (9) Military mobilization orders (if appropriate)

D. Any student who has attempted to obtain or obtained a SC HOPE Scholarship award through means of willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the SC HOPE Scholarship.

E. Visually impaired, hearing impaired or multi-handicapped students who qualify for the SC HOPE Scholarship may use the State Scholarship funds for the freshman year only to attend a four-year out-of state institution that specializes in educating students with their impairment upon receiving prior approval from the Commission on Higher Education. The Commission on Higher Education shall make the final decision as to whether an out-of-state institution specializes in the postsecondary education of visually impaired, hearing impaired or multi-handicapped students.

F. It is the institution's responsibility to ensure that only eligible students receive the Scholarship.

62-900.130 Institutional Disbursements

A. The eligible institution will identify award amounts, which cannot exceed two thousand eight hundred dollars (includes \$300 book allowance) for students enrolled at four-year public and independent institutions for the freshman year of attendance only. Half shall be disbursed during the fall term and half during the spring term (or their equivalents). Scholarships cannot be disbursed during the summer or any interim sessions. The SC HOPE Scholarship in combination with all other gift aid, including federal, State, private and institutional funds, shall not exceed the cost-of-attendance as defined in Title IV regulations for any academic year.

B. After the last day to register for each term of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident who is a full-time, degree-seeking student. The institution must submit a request for funds and/or a return of funds by the established deadline each term. In addition, a listing of all eligible recipients by identification number with award amounts for the term must be sent to the Commission on Higher Education by the established deadline each term. At this time, any unused funds must be returned to the Commission immediately.

C. The Commission will disburse awards to the eligible institutions to be placed in each eligible student's account.

D. Students must be enrolled full-time at an eligible institution at the time of Scholarship disbursement. Students who are retroactively awarded must have been enrolled in a minimum of twelve credit hours at the home institution at the time the Scholarship would have been disbursed for that term.

62-900.135 Program Administration and Audits

A. The South Carolina Commission on Higher Education shall be responsible for the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with participating institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of guidelines and regulations governing the SC HOPE Scholarship Program, any audits or other oversight as may be deemed necessary to monitor the expenditures of Scholarship funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible institutions that participate in the program must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a SC HOPE Scholarship institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person. The institutional representative will act as the student's fiscal agent to receive and deliver funds for use under the program.

62-900.140 Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program guidelines, rules, or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution's continued participation in the program and require reimbursement to the SC HOPE Scholarship Program for any funds lost or improperly awarded.

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B. Upon receipt of evidence that an institution has failed to comply with program rules, regulations, or guidelines, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any public or independent college or university, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant Statutes, pertinent rules, and regulations.

Fiscal Impact Statement:

There will be no additional cost incurred by the State or any political subdivisions.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 62-900.85-140 concerning the SC HOPE Scholarship. Presently this regulation is out of date since this regulation sets the SC HOPE award amount at \$2,500, and allows that a student may have one alcohol and drug related offense before they lose their SC HOPE Scholarship. This regulation would set the maximum SC HOPE Scholarship award at \$2,800, and allow for a student to have two alcohol and drug related offense before they lose their SC HOPE Scholarship. This regulation is necessary in order to implement Acts 115 and 103, passed during the 2007 legislative session.

Document No. 3129

COMMISSION ON HIGHER EDUCATION

CHAPTER 62

Statutory Authority: 1976 Code Sections 59-58-10 through -140

62-6. Licensing Criteria.

Synopsis:

The Commission on Higher Education is the licensing authority for nonpublic (private) institutions operating or soliciting in the State. From time to time issues concerning licensing standards come to the attention of the Commission. The regulations require as a prerequisite to licensing that out-of-state degree-granting institutions have recognized accreditation.

62-6.A. The proposed change requires that in-state degree-granting institutions also obtain accreditation and that in-state non-degree-granting institutions have accreditation before they apply for degree-granting authority.

Instructions:

Amend section A. to break out subsection i. and add "or the Council for Higher Education Accreditation" and add subsections ii and iii.

Text:

The Commission may license the institution after due investigation has revealed that the institution and its programs have met the following criteria:

A. The course, program, curriculum, and instruction are of quality, content, and length as may reasonably and adequately achieve the stated objective for which the course, program, curriculum or instruction is offered and

in response to documented need. For specific program length and instructor qualifications, see Regulations 62-9 through 62-13.

i. An accrediting body recognized by the U. S. Department of Education or the Council for Higher Education Accreditation must accredit out-of-state degree-granting institutions.

ii. Within a period of time that the institution may reasonably expect to meet the requirements, an in-state degree-granting institution must gain candidate or applicant status as appropriate for accreditation and subsequently accreditation from an accrediting body approved by the Commission, typically one recognized by the U.S. Department of Education or the Council for Higher Education Accreditation. The period of time to gain candidate status (up to four years) and accreditation (up to a total of eight years) will be determined by the Commission in consultation with the institution. To determine the appropriate accrediting agency and length of time within which an institution must gain candidate/applicant status and accreditation, the Commission must take into consideration the objectives and length of the programs and requirements of the accrediting body.

iii. An accrediting body approved by the Commission must accredit an in-state nondegree-granting institution before the institution seeks licensure to offer programs leading to degrees.

B. There is in the institution adequate space, equipment, instructional material, and appropriately qualified instructional personnel to provide training and education of good quality. The student-teacher ratio shall be reasonable at all times in keeping with generally accepted teaching modes for the subject matter. Skill training requires more attention, and thereby requires smaller classes. The institution must employ at least one full-time faculty for each major, curricular area, or concentration. This requirement may be met by faculty at the main campus and/or at locations within South Carolina. A full-time faculty member is one whose major employment is with the institution, whose primary assignment is in teaching and/or research, and whose employment is based on a contract for full-time employment. Institutions must ensure that each faculty member employed is proficient in oral and written communication in the language in which assigned courses will be taught. The institution must keep on file for each full-time and part-time faculty member documentation of academic preparation, such as official transcripts and, if appropriate for demonstrating competency, official documentation of professional and work experience, technical and performance competency, records of publications, certifications, and other qualifications. Institutions are encouraged to recruit and select faculty whose highest degree is earned from a broad representation of institutions.

C. The institution owns or makes available sufficient learning resources or, through formal agreements with institutional or other (where adequate) libraries to which students have access, ensures the provision of and access to adequate learning resources and services required to support the courses, programs and degrees offered. Formal agreements are defined and understood as written agreements in which each of the parties states clearly the resources and services it is willing and able to provide. Formal agreements shall be regularly reviewed and reaffirmed by participating parties.

D. A procedure exists for maintaining written records of the previous education and training of the applicant student clearly showing that appropriate credit is given by the institution, shortening the education and training period where warranted, and notifying the student. The policy must include the requirement for official transcripts of credit earned from institutions previously attended and qualitative and quantitative criteria for acceptability of transfer work. Institutions must award credit in accord with commonly accepted good practice in higher education. Institutions that award credit for experiential learning must do so under recognized guidelines that aid in evaluation for credit such as those prescribed by the American Council on Education. At least twenty-five percent of the program must be earned through instruction by the institution awarding the degree. Articulation agreements between associate and baccalaureate degree-granting institutions should be evaluated periodically to ensure an equitable and efficient transfer of students. "Inverted," "two plus two" and similar programs must include an adequate amount of advanced coursework in the subject field. Not more than sixty-four credit hours (approximately one-half) of a baccalaureate program may be transferred from a two-year (Level I accredited) institution. Out-of-state institutions offering programs at branch sites must grant transfer credit into the same programs at its principal location.

E. The institution has developed satisfactory course and program outline(s) including syllabi for each course

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specifying goals and requirements, course content, methods of evaluation, and bibliography; a schedule of tuition, fees, other charges and refund policy; attendance policy; grading policy including a policy for incomplete grades; rules of operation and conduct; and a policy for handling student complaints in compliance with Regulation 62-27.

F. The institution must award the student an appropriate certificate, diploma or degree showing satisfactory completion of the course, program, or degree.

G. Adequate records as prescribed by the Commission are kept to show attendance and progress or grades, and satisfactory standards relating to attendance, progress, and conduct are enforced.

H. The institution complies with all local, county, and state regulations, such as fire, building, and sanitation codes. The Commission may require evidence of such compliance.

I. The institution is financially sound and can fulfill its commitments for education or training.

J. The institution's owners and directors are appropriately experienced and educated and are of good reputation and character. Site directors should be credentialed at the same level as the highest degree conferred at the site. Chief Academic Officers (those who choose faculty) must be credentialed at the same level as required for faculty. Exceptions must be documented and approved by the Commission. All administrative officers must possess credentials, experience and/or demonstrated competence appropriate to their areas of responsibility. The effectiveness of all administrators must be evaluated periodically. A person is considered to be of good reputation if:

(1) The person has no felony convictions related to the operation of a school, and the person has been rehabilitated from any other felony convictions;

(2) The person has no convictions involving crimes of moral turpitude;

(3) Within the last ten years, the person has never been successfully sued for fraud or deceptive trade practice;

(4) The person is not a plaintiff or defendant in litigation that carries a significant risk to the ability of the institution to continue operation;

(5) The person does not own a school currently violating legal requirements; has never owned a school with habitual violations; or has never owned a school that closed with violations including, but not limited to, unpaid refunds; or

(6) The person has not knowingly falsified or withheld information from representatives of the Commission.

K. The institution has, maintains, and publishes in its catalog, bulletin, or brochure and in its enrollment contract the proper refund policy that complies with Regulation 62-18.

L. The institution does not use erroneous or misleading advertising by actual statement, omission, or intimation.

M. The institution does not use a name that is misleading, the same as or similar to that of an existing institution.

N. The institution publishes and enforces admission requirements consistent with the purposes of the institution. To be admitted to degree programs, applicants must show official high school transcripts or GED scores. Official transcripts and GED scores must be a part of the admitted student's file.

O. The institution does not owe a penalty under Chapter 58 of Title 59, South Carolina Code of Laws, 1976.

P. The institution provides to each student before enrollment a catalog, bulletin or brochure meeting the requirements of Regulation 62-16.

Q. Any student living quarters owned, maintained, or approved by the institution are appropriate, safe and adequate.

R. All new programs and all major program revisions have been reviewed and approved by the Commission before the proposed date of implementation.

S. The institution shall comply with such additional criteria as may be required by the Commission.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The purpose of the revision is to align the accreditation requirement for in-state institutions with out-of-state institutions, to provide additional accountability and credibility that is associated with accreditation and thereby provide additional consumer protection for consumers of private, postsecondary education.

The current standards do not require that in-state institutions under the jurisdiction of the Nonpublic Postsecondary Institution License Act become accredited. While “start-up” in-state institutions are rare, the Commission licensed two new institutions in 2004-2005. Individuals in increasing numbers contact the staff about seeking licensure for in-state degree-granting authority. Officials from several non-degree vocational training schools have inquired about degree-granting authority. Because of reservations about the ability of institutions to comply with requirements, the staff has in the past several years declined to move forward with the review of proposals from non-degree-granting to degree-granting and has returned as insufficient two proposals for new, in-state, degree-granting institutions. This recent activity indicates that the Commission can expect more of these kinds of requests in the future.

The provision will further protect consumers of private, postsecondary education in that accreditation provides an additional level of oversight and accountability. Accreditation enhances the changes of transfer of credit to other institutions and acceptance of credentials by employers.

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Document Number 3185
COMMISSION ON HIGHER EDUCATION
CHAPTER 62
Statutory Authority: 1976 Code Section 59-142-20

62-450. South Carolina Need-based Grants Program

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-450 of the South Carolina Need-based Grants Program. The proposed amendments will clarify the policies and procedures for administering the Need-based Grants Program at the State's public colleges and universities. The proposed amendments include language that will allow summer semester as part of the academic year. This inclusion will allow students to receive Need-based Grant funding for summer semester. The inclusion of summer semester does not preclude Code Section 59-142-10B(3), which stipulates that a student eligible for the need-based grants may only receive the grant for a maximum of four academic years of two semesters. The Commission on Higher Education proposes to amend and replace in its entirety R.62-460Q of the South Carolina Need-based Grant Program. The General Assembly passed Act 103 establishing that any LIFE, Palmetto Fellows, S.C. HOPE or S.C. Need-based Grant recipient who is adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any second or subsequent alcohol or drug-related offenses under the laws of this or any other state or under the laws of the United States will lose their State Scholarship or Grant for the following academic year. In addition, the Commission on Higher Education proposes to amend and replace in its entirety R.62-465A(3) in identifying a South Carolina resident.

Instructions: The following regulation will replace in its entirety R.62-450 through 62-505, SC Need-based Grant Program, to Chapter 62 regulation.

Text:

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62-450	Purpose of the South Carolina Need-based Grants Program

Pursuant to Act 458, South Carolina Children First: Resources for Scholarships and Tuition Act of 1996, of the 1995-1996 Appropriations Bill, the Commission on Higher Education shall promulgate regulation and establish procedures to administer the South Carolina Need-based Grants Program. The purpose of the South Carolina Need-based Grants Program is to provide additional financial aid assistance to South Carolina's neediest students. The program will assist students who wish to attend public or independent colleges or universities in the State.

62-455 Allocation of Need-based Grant Funds to Public and Independent Institutions

A. Funds made available for higher education grants and scholarships under Chapter 143 of Title 59 of the 1976 Code, as amended under Act 458, South Carolina Children First: Resources for Scholarship and Tuition Act of 1996, shall be included in the annual appropriation to the Commission on Higher Education. Fifty percent of the appropriation shall be designated for the Palmetto Fellows Scholarship Program and the remaining fifty percent shall be for the Need-based Grants Program. However, in instances where the equal division of the appropriated funds between the Palmetto Fellows Scholarship and Need-based Grants Programs exceeds the capacity to make awards in either program, the Commission on Higher Education has the authority to re-allocate the remaining funds between the two programs. The Commission on Higher Education shall award to eligible students who are attending public or independent eligible institutions as State Need-based Grant recipients as follows:

1. Of the funds allocated to public institutions, the percentage shall be equivalent to the percentage of the public institution's share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year.

2. Of the funds allocated to independent institutions, the percentage shall be equivalent to the percentage of the independent institutions' share of the total South Carolina resident undergraduate full-time headcount enrollment in the preceding year and will be determined annually by the South Carolina Commission on Higher Education and the Tuition Grants Commission. The funds allocated for Need-based Grants shall be included in the annual appropriation to the Commission on Higher Education and transferred annually into the budget of the South Carolina Tuition Grants Commission, which will distribute these funds as Tuition Grants.

62-460 Program Definitions for Administering South Carolina Need-based Grants at Public Institutions

A. "Academic year" is defined as the fall, spring and summer semesters during which a part-time student would be expected to earn a minimum of six credit hours for each semester the student is enrolled for a minimum of 12 credit hours or a full-time student would be expected to earn a minimum of twelve credit hours for each semester to earn a minimum of 24 credit hours.

B. "Associate degree program" is defined as a two-year technical or occupational program or an associate's degree program (Associate of Arts or Associate of Science) which leads to the first two years of a baccalaureate degree at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and authorized by the Commission on Higher Education.

C. "Baccalaureate degree program" is defined as an undergraduate program of study leading to the first bachelor's degree at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and authorized by the Commission on Higher Education.

D. "Degree-seeking student" is defined as any part-time or full-time student enrolled in an eligible program of study at an eligible institution.

E. "Eligible program" is defined as a program of study leading to: 1) the first baccalaureate degree 2) a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree; 3) first associate's degree or two-year program that is acceptable for full credit towards a bachelor's degree; or 4) one-year program that leads to other recognized credentials (e.g., first diploma or first certificate). Study toward the first diploma or certificate may be followed by study toward the first associate's degree, which may be followed by transfer to the first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree. Students who have already obtained a baccalaureate degree are not eligible for subsequent grant funds.

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F. "Full-time student" shall mean a student who has matriculated into an eligible program of study, and who enrolls in a minimum of twelve credit hours during the regular academic semester.

G. "Independent institutions" are those institutions eligible to participate in the South Carolina Tuition Grants Program as defined in Chapter 113 of Title 59 of the 1976 Code, which stipulates that "an independent institution of higher learning means any independent eleemosynary junior or senior college in South Carolina whose major campus and headquarters are located within South Carolina and which is accredited by the Southern Association of Colleges and Schools."

H. "Need analysis" shall mean the process of analyzing the household and financial information on the student's financial aid application and calculating the amount the family can be expected to contribute to the educational costs. For Federal Student Aid Programs, the need analysis system is defined under Title IV of the Higher Education Act of 1965.

I. "Needy student" shall mean a post-secondary student enrolled in or accepted for enrollment in a public institution who demonstrates to the institution the financial inability, either parental, familial, or personal, to bear the total cost-of-attendance for any regular academic semester. The determination of need shall be made in accordance with Federal need analysis formulae and provisions.

J. An "offense" shall mean a violation of any law or rule in any state or Federal criminal justice system.

K. "One-year program" is defined as an undergraduate program of study leading to other recognized educational credentials (e.g., certificates or diplomas that prepare students for gainful employment in a recognized occupation) at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs and is authorized by either the Commission on Higher Education or the State Board for Technical and Comprehensive Education.

L. "Part-time student" shall mean a student who has matriculated into an eligible program of study, and who enrolls in a minimum of six credit hours and a maximum of eleven credit hours during the regular academic semester.

M. "Program of study that is structured so as not to require a baccalaureate degree" is a program of study that is structured so as not to require a baccalaureate degree for acceptance into the program and leads to a graduate degree, which will be the student's first academic degree awarded, at a location approved by the U.S. Department of Education for participation in Federally funded financial aid programs. Students are eligible to receive the grant for a maximum of eight full-time equivalent semesters as long as all other eligibility criteria are met. Students who have been awarded a baccalaureate or graduate degree are not eligible for grant funding.

N. "Public institutions" are those institutions as defined in Chapter 103 of Title 59 of the 1976 Code, which stipulates that: "1) 'public higher education' shall mean state-supported education in the post-secondary field, including comprehensive and technical education; 2) 'public institution of higher learning' shall mean any state-supported post-secondary educational institution and shall include technical and comprehensive educational institutions."

O. "Remedial coursework" shall mean sub-collegiate level preparatory courses in English, mathematics, and reading offered at the State's technical colleges.

P. "Satisfactory academic progress" shall mean the minimum academic standard for academic progress established by the public institution for the purpose of complying with Title IV regulations for Federal Student Aid Programs.

Q. "South Carolina resident" shall be defined as an individual who satisfies the requirements of residency in accordance with the State of South Carolina Statute for Tuition and Fees, Statute 59-112-10.

62-465 Student Eligibility

A. To be eligible for a Need-based Grant each academic year, the student must:

1. Be a "needy student" following the financial need analysis as established under Title IV Regulations for determining eligibility for Federal Student Aid. The student must file the Free Application for Federal Student Aid (FAFSA) Form;

2. Be a U.S. citizen or a permanent resident that meets the definition of an eligible non-citizen under State Residency Statute;

3. Be a resident of the state of South Carolina for twelve consecutive months as defined in Chapter 112 of Title 59 of the 1976 Code of Laws governing the determination of residency for tuition and fee purposes;

4. Be enrolled or accepted for enrollment as a part-time or full-time degree-seeking student in an eligible program of study at an eligible public institution in South Carolina. A student enrolled in less than six credit hours during one semester may not receive a Need-based Grant for the semester in question but is eligible for reapplication for a grant upon return to part-time or full-time status;

5. Be enrolled and attending or have completed at the time of the grant disbursement in a minimum of six credit hours if part-time for the semester or twelve credit hours if full-time for the semester;

6. Certify that he/she has not been adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any second or subsequent alcohol or drug-related offenses under the laws of this or any other state or under the laws of the United States in order to be eligible for a South Carolina Need-based Grant, except that a high school or college student otherwise qualified who has been adjudicated delinquent or has been convicted or pled guilty or nolo contendere to a second or subsequent alcohol or drug-related misdemeanor offense nevertheless shall be eligible or continue to be eligible for such grants after the expiration of one academic year from the date of the adjudication, conviction, or plea; and be eligible for the need-based grants for a maximum of four academic years of two semesters by submitting a signed affidavit each academic year to the institution. However, a high school or college student who has been adjudicated delinquent, convicted, or pled guilty or nolo contendere of a second or subsequent alcohol/drug related misdemeanor offense is ineligible for the next academic year of enrollment at an eligible institution after the date of the adjudication, conviction or plea. If the adjudication, conviction, or plea occurs during the academic year after the student has already submitted a signed affidavit to the institution, the student will be eligible to receive the Need-based Grant the remainder of the academic year. However, the student will be ineligible for the Need-based Grant the following entire academic year of enrollment. If a student completes a pretrial intervention program and has his/her record expunged the conviction will not affect grant eligibility; and

7. Verify that he/she does not owe a refund or repayment on a State Grant, a Pell Grant, or a Supplemental Educational Opportunity Grant and is not in default on a loan under the Federal Perkins Loan or Federal Stafford Loan Programs; and

8. Must reapply for the Need-based Grant each academic year and meet all eligibility requirements annually.

B. Students enrolled part-time or full-time may not receive a Need-based Grant for more than a maximum of eight full-time equivalent semesters. Students may only receive Need-based Grant funding for up to two semesters of the academic year. Students who have already been awarded their first baccalaureate

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degree are not eligible to receive a Need-based Grant.

C. Students enrolled in an eligible program of study as stated in the “Program Definitions” Section may include remedial courses as part of the minimum number of required credit hours for part-time or full-time status, as long as such courses carry credit hours and meet Title IV limitations on remedial coursework.

D. Any false information provided by the student or any attempt to obtain or expend any Need-based Grant for unlawful purposes or any purpose other than in payment or reimbursement for the cost-of-attendance at the institution authorized to award the grant will be cause for immediate cancellation of the Need-based Grant. Any student who has obtained a Need-based Grant through means of a willfully false statement or failure to reveal any material fact, condition, or circumstances affecting eligibility will be subject to applicable civil or criminal penalties, including loss of the Need-based Grant.

62-470 Policies and Procedures for Awarding Need-based Grants

A. The Need-based Grants Program for the public institutions will be campus-administered. Grant funds will supplement the student financial aid awards administered by the participating public colleges and universities.

B. The participating institution will make awards in amounts to be defined in accordance with the Need-based Grants Program regulation and criteria, but not to exceed \$1,250 per eligible part-time student and \$2,500 per eligible full-time student per academic year, based on the institution's allocated funds for Need-based Grants and other financial aid awarded to individual applicants. However, the Commission, due to inflation increases or other relevant factors, may periodically adjust the maximum award for the Need-based Grants Program. A maximum of fifty percent of the grant shall be disbursed for two terms of the academic year, assuming continued eligibility.

C. Need-based Grants are to be used only towards payment for the cost-of-attendance as defined by Title IV Regulations as modified by D below for the academic year for which the award is made at the designated institution. The maximum amount awarded shall not exceed the cost-of-attendance as defined in Title IV Regulations for any year.

D. Charges for room and board are to be limited as follows:

1. Room charges shall not exceed the average cost of on-campus residential housing; and
2. Board charges shall not exceed the cost of the least expensive on-campus meal plan, which includes 21 meals per week.

E. In determining the amount awarded for the Need-based Grant, all other sources of gift aid, including Federal, State, private and institutional funds, must be applied to the total cost-of-attendance in accordance with Title IV Regulations before calculating the unmet need and awarding the grant. The Need-based Grant shall be awarded only after all other sources of gift aid have been exhausted. Adjustments to the financial aid package will be made to the Need-based Grant in accordance with prescribed Title IV Regulations in order to prevent an over-award.

F. Institutions must give first priority and award the maximum allowable Need-based Grant (\$2,500 if full-time or \$1,250 if part-time) to students who are in the custody of the South Carolina Department of Social Services (DSS). However, institutions should not award the maximum amount if, by doing so, this causes the student to exceed the unmet need according to Title IV Regulations. Students who may be eligible under this provision are responsible for contacting the institution and providing official verification to the institution that he/she is in custody of DSS. Acceptable verification shall include a letter from DSS.

G. Participating institutions will notify students of their Need-based Grant along with the terms and

conditions of the award.

H. Annual allocations of funds to the public institutions will be based on each institution's percentage of the State's total enrollment of South Carolina resident undergraduate full-time degree-seeking headcount enrollment. The percentage will be based on the previous year's total as determined by the Commission on Higher Education. Unused funds, which cannot be awarded by an institution, must be returned to the Commission on Higher Education, which may redirect the funds to institutions where unmet need exists.

I. The institution must retain annual paper or electronic documentation for each award to include at a minimum:

1. Need analysis
2. Affidavit documenting that the student has never been convicted of any felonies or any second or subsequent alcohol or drug related misdemeanor offenses as stated under "Student Eligibility" and "Duration of Award and Continued Eligibility" Sections
3. Award notification
4. Institutional disbursement to student
5. Refund or repayment (if appropriate)
6. Satisfactory academic progress
7. Student's residency status
8. Enrollment and curriculum requirements
9. Student's disability (if appropriate)
10. Student is in custody of DSS (if appropriate)
11. Student award based upon approval of institutional appeal (if appropriate)

J. It is the institution's responsibility to ensure that only eligible students receive a Need-based Grant.

62-475 Duration of Award and Continued Eligibility

A. Need-based Grants shall be awarded for up to two terms each academic year. The institution shall adjust the amount of the grant award during the academic year in the event of a change in the student's eligibility.

B. Need-based Grants may be awarded annually for no more than a total of eight full-time equivalent semesters of part-time or full-time study and only for up to two terms of each academic year. Award decisions will be made annually and are not automatically guaranteed. Students who have already been awarded their first baccalaureate degree are not eligible to receive a Need-based Grant.

C. Students must reapply each academic year for a Need-based Grant in accord with these guidelines and other pertinent statutes and regulations and with application timeliness and procedures stipulated by the participating institution. Students applying for a Need-based Grant must complete a FAFSA Form and be a needy student. The student must also complete any supplemental forms that may be required by the institution.

D. The institution shall be responsible for securing institutional certification of each recipient's cumulative grade point average, credit hours attempted and earned, and satisfactory academic progress for purposes of determining eligibility for award renewal.

E. For continued eligibility, the student is required to:

1. For graduation purposes, earn at least 24 credit hours each regular academic year if awarded a Need-based Grant as a full-time student or earn at least twelve credit hours if awarded a Need-based Grant as a part-time student. If a student is awarded a Need-based Grant for one semester of the academic year as a part-

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time student and the other semester as a full-time student, the student must earn at least eighteen credit hours each regular academic year. If a full-time student is awarded a Need-based Grant for only one semester of the academic year, the student must earn at least twelve credit hours by the end of the academic year. A part-time student who is awarded a Need-based Grant for only one semester must earn at least six credit hours by the end of the academic year. Credits earned during any additional semesters (i.e., interim, winterim or other non-regular semester) cannot be used to replace or reduce the minimum credit hour requirement for the regular academic year; and

2. Earn at least a cumulative 2.0 grade point average on a 4.0 scale for graduation purposes by the end of each regular academic year.

F. Students wishing to appeal any grant award decision must submit a written request to the institution's Director of Financial Aid. This request will be handled in accordance with the institution's financial aid appeal procedures. The institution's decision on appeals shall be final.

62-480 Students with Disabilities

A. Students who qualify under the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973 must meet all eligibility requirements as defined in "Student Eligibility" Section except for a student who is approved by the Disability Services Provider to be enrolled in less than part-time status is eligible to receive grant funding. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

B. For renewal, students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 must meet all renewal requirements as defined in "Duration of Award and Continued Eligibility" Section except for a student not meeting the annual credit hour requirement who is approved by the Disability Services Provider to be enrolled in less than part-time status for that academic year. Students must earn the required number of hours approved by the institutional Disability Services Provider each academic year for grant renewal and earn a minimum 2.0 cumulative grade point average on a 4.0 scale by the end of the academic year. Students must comply with all institutional policies and procedures in accordance with ADA and Section 504 of the Rehabilitation Act of 1973.

C. The institutional Disability Services Provider must provide written documentation to the Office of Financial Aid each academic year verifying that the student is approved to be enrolled in less than part-time status.

D. Students who qualify under ADA and Section 504 of the Rehabilitation Act of 1973 are eligible to receive up to the maximum number of available semesters and available funds.

62-485 Enrollment in Internships, Cooperative Work Programs, Travel Study Programs, or National or International Student Exchange Programs

A. Students enrolled in an internship, cooperative work program, travel study program, or National or International Student Exchange Program approved by the student's home institution, and enrolled in fewer than six credit hours, shall not be eligible to receive a Need-based Grant during the period in which the student is enrolled in such programs or courses. Students enrolled in such programs may receive a Need-based Grant for up to two terms of the academic year if determined to be eligible.

B. Students enrolled in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as at least part-time transfer credit (minimum of six credit hours) are eligible to receive Need-based Grant funds during the period in which the student is enrolled in such programs. Students will be required to meet the continued eligibility requirements.

C. Eligible students may use the appropriated portion of the Need-based Grant funds for internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs that are approved by the home institution and that the home institution accepts as at least part-time transfer credit (minimum of six credit hours). Need-based Grant funds must be paid directly to the student's account at the home institution. The amount awarded cannot exceed the cost-of-attendance at the home institution or the cost-of-attendance at the host institution, whichever is less. The Commission on Higher Education will not transfer grant funds to the institutions where students will participate in internships, cooperative work programs, travel study programs, or National or International Student Exchange Programs. The institution is responsible for grant funds according to the "Program Administration and Audits" Section.

D. The home institution will be responsible for securing official certification of the student's cumulative grade point average, credit hours earned, and satisfactory academic progress for the purposes of determining eligibility for grant renewal for the next academic year.

62-490 Institutional Disbursement of Need-based Grants

A. The participating institution will identify award amounts, which cannot exceed \$1,250 per eligible part-time student and \$2,500 per eligible full-time student per academic year. A maximum of fifty percent of the grant shall be disbursed for up to up to two terms of the academic year. The maximum amount, which may be received by a recipient for eight full-time equivalent semesters, shall be \$10,000 for students seeking their first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree, \$5,000 for students seeking their first associate's degree, and \$2,500 for students seeking their first one-year certificate or diploma. Students who have obtained an associate's degree initially are eligible to apply for a Need-based Grant upon enrollment in their first baccalaureate degree or a program of study that is structured so as not to require a baccalaureate degree. Students who have obtained a recognized educational credential in a one-year program initially are eligible for application for a Need-based Grant upon enrollment in their first associate's degree, first baccalaureate degree, or a program of study that is structured so as not to require a baccalaureate degree and leads to a graduate degree.

B. A Need-based Grant may not be applied to a second baccalaureate degree or to graduate coursework, unless the graduate coursework is required as part of a program of study that is structured so as not to require a baccalaureate degree as defined in the "Program Definitions" Section.

C. The institution shall provide an award notification each academic year to Need-based Grant recipients, which will contain the terms and conditions of the grant and other financial aid awarded. Students will be notified of adjustments in financial aid due to changes in eligibility and/or over-award issues. The Commission on Higher Education, for documentation purposes, requires that each institution obtain verification of acceptance of the Need-based Grant and terms for the award.

D. After the last day to register for each semester of the academic year, the institution will verify enrollment of each recipient as a South Carolina resident that is a part-time or full-time degree-seeking student. According to the Scholarship and Grant Programs Policies and Procedures Manual, a listing of eligible recipients by social security number with the award amounts for the semester will be sent to the Commission on Higher Education with the institution's request for funds. A year-end reconciliation report will be submitted to the Commission on Higher Education prior to June 30th. Any unused funds shall be refunded to the Commission on Higher Education no later than June 30th of each fiscal year.

62-495 Refunds and Repayments

A. In the event a student who has been awarded a Need-based Grant withdraws, is suspended from the institution, or drops below part-time (six credit hours) or full-time (twelve credit hours) status during any regular semester of the academic year, institutions must reimburse the Need-based Grants Program for the

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amount of the grant for the semester in question pursuant to refund policies of the institution. Collection is the responsibility of the institution.

B. The institution may redistribute such funds to other eligible students in accordance with the guidelines, or if such funds cannot be redistributed within the academic year, the institution shall return the refund amount to the Commission on Higher Education for redistribution to other institutions.

C. In the event a student withdraws or drops below part-time or full-time status after the institution's refund period and therefore must pay tuition and fees for part-time or full-time enrollment, the award may be retained by the student pursuant to the refund policies of the institution.

62-500 Program Administration and Audits

A. The South Carolina Commission on Higher Education will coordinate the oversight of functions (e.g., guidelines, policies, rules, regulations) relative to this program with eligible institutions. The Commission on Higher Education shall be responsible for the allocation of funds, promulgation of the regulation and rules, any audits, or other statewide oversight of the Need-based Grants Program as deemed necessary to monitor the expenditure of grant funds.

B. According to the Audit Policies and Procedures for Scholarship and Grant Programs Manual, all eligible institutions that participate in the program must abide by program policies, rules or regulations. Institutions also agree to maintain and provide all pertinent information, records, reports, or any information as may be required or requested by the Commission on Higher Education or the General Assembly to ensure proper administration of the program.

C. Participating institutions are authorized to establish additional guidelines, rules, and regulations for awarding the grants consistent with the South Carolina Need-based Grants Program Regulation contained herein.

D. The Chief Executive Officer at each participating institution shall identify to the Commission on Higher Education a Need-based Grant institutional representative who is responsible for the operation of the program on the campus and will serve as the contact person for the program. The institutional representative will act as the student fiscal agent to receive and deliver funds for use under the program.

62-505 Suspension or Termination of Institutional Participation

A. The Commission may review institutional administrative practices to determine institutional compliance with pertinent statutes, guidelines, rules or regulations. If such a review determines that an institution has failed to comply with program statutes, guidelines, rules or regulations, the Commission may suspend, terminate, or place certain conditions upon the institution's continued participation in the program and require reimbursement to the State Need-based Grants Program for any funds lost or improperly awarded.

B. Upon receipt of evidence that an institution has failed to comply, the Commission on Higher Education shall notify the institution in writing of the nature of such allegations and conduct an audit.

C. If an audit indicates that a violation or violations may have occurred or are occurring at any public or independent college or university, the Commission on Higher Education shall secure immediate reimbursement from the institution in the event that any funds were expended out of compliance with the provisions of the Act, any relevant statutes, guidelines, rules, and regulations.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

Revisions to the S.C. Need-based Grant regulation were necessary to be consistent with legislation approved during the 2007 legislative session.

Document No. 3170

COMMISSION ON HIGHER EDUCATION**CHAPTER 62**

Statutory Authority: 1976 Code Sections 59-58-10 through 59-58-140

62-7. Bond Requirement

Synopsis:

62-7.A. is amended to allow the Commission to use surety bond funds to pay refunds of unearned tuition and fees, to pay for or subsidize the cost of providing facilities and instruction to complete programs, or pay expenses to store and maintain student records.

The Commission on Higher Education is the licensing authority for nonpublic (private) institutions operating or soliciting in the State. The Commission may require that the institution provide a surety bond to be used for the benefit of students who suffer financial losses of tuition and fees prepaid to an institution as a result of the closing of the institution. The statute also authorizes the Commission to establish a student recovery fund; the Commission has not promulgated regulations to establish a student recovery fund. On May 17, 2007, a change in the Nonpublic Postsecondary Institution License Act became effective that allows the Commission to use funds available from a surety bond or money in a student recovery fund to pay refunds to students for unearned tuition and fees, to pay for or subsidize the cost of providing facilities and instruction, or to pay expenses to store and maintain student records. The proposed change to Commission on Higher Education Regulation 62-7.A. will replicate the language now included in the statute to expand the ways the Commission may use available funds to assist students who were enrolled in an institution that closed.

Instructions:

Amend section A. to remove “only for payment of a refund of tuition and other instruction fees due a student or potential student” and add the new language.

Text:

62-7. Bond Requirement.

A. Before an institution is licensed, a surety bond must be provided by the institution. The obligation of the bond will be that the institution, its officers, agents, and employees will faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the State. The bond shall be to the Commission, in such form as approved by the Commission, and is to be used for the benefit of students who suffer financial losses of tuition and fees prepaid to an institution. The losses must be as a result of the closing of the institution. The Commission may use the funds to pay refunds of unearned tuition and fees, to pay for or subsidize the cost of providing facilities and instruction for students to complete their programs, or to pay expenses to store and maintain records of these students.

B. The bond company may not be relieved of liability on the bond unless it gives the institution and the Commission ninety days notice by certified mail of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's license is revoked as a

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matter of law on the effective date of the cancellation or discontinuance of bond coverage unless a replacement bond is obtained and provided to the Commission.

C. Before an original license is issued, the institution shall have executed a surety bond in an amount not less than ten percent of the projected annualized gross income of the proposed program(s) to be licensed, in ten thousand dollar increments. However, if the projected annualized gross tuition income of the proposed program(s) is less than five thousand dollars, the initial bond must be in an amount at least equal to the projected income, but in no event will the bond be less than five thousand dollars.

D. The minimum amount of bond to be submitted with a renewal application will be based on the annual gross tuition income from licensed programs for the previous year. No additional programs may be offered without appropriate adjustment to the bond amount.

(1)

Previous year's annual gross tuition income	Minimum bond
\$ 0 - \$100,000	\$10,000
\$101,000 - \$200,000	\$20,000
\$201,000 - \$300,000	\$30,000
\$301,000 and above	10%, calculated at \$100,000 increments

(2) For out-of-state institutions licensed to offer their program(s) to residents of the State, gross tuition income means that income generated from students enrolled in the State. The bond for an out-of-state institution shall not be less than \$20,000, unless otherwise specified by the Commission, but in no event shall be less than \$10,000.

E. Institutions shall provide a statement by a school official and written evidence confirming that the amount of the bond meets the requirements of this regulation. The Commission may require that such statement be verified by an independent certified public accountant if the Commission determines that the written evidence confirming that the amount of the bond is questionable.

F. Instead of the surety bond, the institution may pledge other means of collateral acceptable by the State Treasurer, in an aggregate market value of the required bond. The Commission shall deliver a safekeeping receipt of collateral to the State Treasurer to be held until the Commission serves notice for its release to the Commission.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The purpose of the revision is to align regulation with the statute and thereby provide additional consumer protection for consumers of private, postsecondary education. The current language limits the use of funds from a surety bond or student recovery fund to refunds to students. The experience of the Commission is that in instances where institutions close, students may be best served by completing their programs at another institution. Also, the Commission is custodian of student records from schools that have closed. There is currently no source of financial support for storage, maintenance, servicing, and digitizing of the records.

Document No. 3172
COMMISSION ON HIGHER EDUCATION
 CHAPTER 62
 Statutory Authority: 1976 Code Chapter 112, Title 59

62-600. Determination of Rates of Tuition and Fees

Synopsis:

The Commission on Higher Education proposes to amend and replace in its entirety R.62-600 of the SC Residency Program. Revisions to the existing regulation for the SC Residency Regulation are being considered to clarify the policies and procedures for administering the program. In the proposed amendment, the definition of a dependent is clarified and the use of voter registration cards to prove SC residency will be prohibited. In addition, institutional residency officers will be allowed to develop an appeal process for students to challenge institutional residency decisions. There are also additional clarifications being proposed, such as adding definitions and minor grammatical changes to promote consistency among the State institutions and their residency classification processes.

Instructions: Amend or leave as is the following sections as indicated below

Section	Changes
62-600.	No change.
62-601.	Delete subsection B.
62-602.	Amends definition (C.) "dependent". Amends definition (I.) "independent". Adds definition (S.) "trust".
62-603.	No change.
62-604.	No change.
62-605.	Eliminates use of voter registration card as piece of indicia to prove residency.
62-606.	Eliminates item number two, use of voter registration card to prove residency.
62-607.	Clarifying language added to section.
62-608.	No change.
62-609.	Clarifying language added to section on exceptions to the twelve month period.
62-610.	No change.
62-611.	No change.
62-612.	Clarifying language added to appeals section.

Text:

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62-600.	Rates of Tuition and Fees.
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62-605.	Establishing the Requisite Intent to Become a South Carolina Domiciliary.
62-606.	Maintaining Residence.
62-607.	Effect of Change of Residency.
62-608.	Effect of Marriage.
62-609.	Exceptions.
62-610.	Application for Change of Resident Status.

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62-611. Incorrect Classification.

62-612. Inquiries and Appeals.

62-600. Rates of Tuition and Fees.

A. Resident classification is an essential part of tuition and fee determination, admission regulations, scholarship eligibility, and other relevant policies of the state. It is important that institutions have fair and equitable regulations that can be administered consistently and are sensitive to the interests of both students and the state. The Commission on Higher Education hereby establishes regulations for the Statute Governing Residency for Tuition and Fee Purposes to be applied consistently by all South Carolina institutions of higher education. These regulations do not address residency matters relating to in county categories used within the State's technical colleges.

B. Institutions of higher education are required by the Statute to determine the residence classification of applicants. The initial determination of one's resident status is made at the time of admission. The determination made at that time, and any determination made thereafter, prevails for each subsequent semester until information becomes available that would impact the existing residency status and the determination is successfully challenged. The burden of proof rests with the students to show evidence as deemed necessary to establish and maintain their residency status.

62-601. Code of Laws Governing Residence.

Rules regarding the establishment of legal residence for tuition and fee purposes for institutions of higher education are governed by Title 59, Chapter 112 of the 1976 South Carolina Code of Laws, as amended.

62-602. Definitions.

A. "Academic Session" is defined as a term or semester of enrollment. (62-607.B)

B. "Continue to be Enrolled" is defined as continuous enrollment without an interruption that would require the student to pursue a formal process of readmission to that institution. Formal petitions or applications for change of degree level shall be considered readmissions. (62-607.A)

C. "Dependent Person" is defined as one whose predominant source of income or support is from payments from a parent, spouse, or guardian, who claims the dependent person on his/her federal income tax return. In the case of those individuals who are supported by family members who do not earn enough reportable income for taxation purposes, a dependent person can be defined as one who qualifies as a dependent or exemption on the federal income tax return of the parent, spouse, or guardian. A dependent person is also one for whom payments are made, under court order, for child support and the cost of the dependent person's college education. A dependent person's residency is based upon the residency of the person upon whom they are dependent. (62-602.G) (62-602.N) (62-603.B) (62-605.C) (62-607.A)

D. "Domicile" is defined as the true, fixed, principal residence and place of habitation. It shall indicate the place where a person intends to remain, or to where one expects to return upon leaving without establishing a new domicile in another state. For purposes of this section, one may have only one legal domicile. One is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for student at institutions shall be presumed not to be a place of principal residence, as residency in such housing is by its nature temporary. (62-602.E) (62-602.K) (62-602.M) (62-602.N) (62-603.A) (62-603.B) (62-605.B) (62-605.C) (62-607.A) (62-607.B) (62-608.A) (62-608.C) (62-608.D) (62-609.A.3) (62-609.A.4)

E. “Family’s Domicile in this State is Terminated” is defined as an employer directed transfer of the person upon whom the student is dependent and is not construed to mean a voluntary change in domicile. Also included is a relocation of the person upon whom the student is dependent who is laid off through no fault of their own, e.g., plant closure, downsizing, etc., who accepts employment in another state prior to relocating. (62-607.A)

F. “Full time employment” is defined as employment that consists of at least thirty seven and one half hours a week on a single job in a full time status. However, a person who works less than thirty seven and one half hours a week but receives or is entitled to receive full time employee benefits shall be considered to be employed full time if such status is verified by the employer. A person who meets the eligibility requirements of the Americans with Disabilities Act must present acceptable evidence that they satisfy their prescribed employment specifications in order to qualify as having full time employment. (62-605.C.1) (62-609.A.2) (62-609.A.3)

G. “Guardian” is defined as one legally responsible for the care and management of the person or property of a minor child based upon the five tests for dependency prescribed by the Internal Revenue Service; provided, however, that where circumstances indicate that such guardianship or custodianship was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or dependent person, it shall not be given such effect. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

H. “Immediately Prior” is defined as the period of time between the offer of admission and the first day of class of the term for which the offer was made, not to exceed one calendar year. (62-607.A)

I. “Independent Person” is defined as one in his/her majority (eighteen years of age or older) or an emancipated minor, whose predominant source of income is his/her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, commercial loans, or payments made in accordance with court order. An independent person must provide more than half of his or her support during the twelve months immediately prior to the date that classes begin for the semester for which resident status is requested. An independent person must have established his/her own domicile for twelve months prior to receiving in-state tuition and fees. An independent person cannot be claimed as a dependent or exemption on the federal tax return of his or her parent, spouse, or guardian for the year in which resident status is requested. (62-602.N) (62-603.A) (62-605.C) (62-607.B) (62-608.B)

J. “Minor” is defined as a person who has not attained the age of eighteen years. An “emancipated minor” shall mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor. (62-602.G)

K. “Non-resident Alien” is defined as a person who is not a citizen or permanent resident of the United States. By virtue of their non-resident status “non-resident aliens” generally do not have the capacity to establish domicile in South Carolina. (62-602.M) (62-604.A)

L. “Parent” is defined as the father, mother, stepfather, stepmother, foster parent or parent of a legally adopted child. (62-602.C) (62-602.E) (62-602.I) (62-602.J) (62-602.M) (62-603.B) (62-603.C) (62-605.C)

M. “Reside” is defined as continuous and permanent physical presence within the State, provided that absences for short periods of time shall not affect the establishment of residence. Excluded are absences associated with requirements to complete a degree, absences for military training service, and like absences, provided South Carolina domicile is maintained. (62-603.A) (62-606.B) (62-609.A) (62-609.A.3) (62-609.A.4) (62-609.B)

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N. "Resident" for tuition and fee purposes is defined as an independent person who has abandoned all prior domiciles and has been domiciled in South Carolina continuously for at least twelve months immediately preceding the first day of class of the term for which resident classification is sought and for whom there is an absence of domiciliary evidence in other states or countries, notwithstanding other provisions of the Statute. (62-600.A) (62-600.B) (62-602.I) (62-602.K) (62-602.M) (62-603.A) (62-603.B) (62-603.C) (62-604.A) (62-605.A) (62-605.C) (62-605.C.7) (62-606.A) (62-606.A.5) (62-606.B) (62-607.A) (62-608.B) (62-609.A.3) (62-610.A) (62-610.B) (62-611.A) (62-611.B)

O. "Spouse" is defined as the husband or wife of a married person in accordance with Title 20, Chapter 1 of the 1976 South Carolina Code of Laws, as amended. (62-602.C) (62-602.E) (62-602.I) (62-602.M) (62-603.B) (62-605.C)

P. "Temporary Absence" is defined as a break in enrollment during a fall or spring semester (or its equivalent) during which a student is not registered for class. (62-606.A)

Q. "Terminal Leave" is defined as a transition period following active employment and immediately preceding retirement (with a pension or annuity), during which the individual may use accumulated leave. (62-609.A.4)

R. "United States Armed Forces" is defined as the United States Air Force, Army, Marine Corps, Navy, and Coast Guard. (62-606.B) (62-609.A(1))

S. "Trust" is defined as a legal entity created by a grantor for the benefit of designated beneficiaries under the laws of the state and the valid trust instrument. However, that where circumstances indicate that such trust was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or independent person, it shall not be given such effect.

62-603. Citizens and Permanent Residents.

A. Independent persons who have physically resided and been domiciled in South Carolina for twelve continuous months immediately preceding the date the classes begin for the semester for which resident status is claimed may qualify to pay in state tuition and fees. The twelve month residency period starts when the independent person establishes the intent to become a South Carolina resident per Section 62-605 entitled "Establishing the Requisite Intent to Become a South Carolina Domiciliary." Absences from the State during the twelve month period may affect the establishment of permanent residence for tuition and fee purposes.

B. The resident status of a dependent person is based on the resident status of the person who provides more than half of the dependent person's support and claims or qualifies to claim the dependent person as a dependent for federal income tax purposes. Thus, the residence and domicile of a dependent person shall be presumed to be that of their parent, spouse, or guardian.

C. In the case of divorced or separated parents, the resident status of the dependent person may be based on the resident status of the parent who claims the dependent person as a dependent for tax purposes; or based on the resident status of the parent who has legal custody or legal joint custody of the dependent person; or based on the resident status of the person who makes payments under a court order for child support and at least the cost of his/her college tuition and fees.

62-604. Non-Resident Aliens, Non-Citizens, and Non-Permanent Residents.

A. Except as otherwise specified in this section or as provided in Section 62-609 (1) & (2), independent non-citizens and non-permanent residents of the United States will be assessed tuition and fees at the non resident, out of state rate. Independent non-resident aliens, including refugees, asylees, and parolees may be entitled to resident, in state classification once they have been awarded permanent resident status by the U.S.

Department of Justice and meet all the statutory residency requirements provided that all other domiciliary requirements are met. Time spent living in South Carolina immediately prior to the awarding of permanent resident status does not count toward the twelve month residency period. Certain non resident aliens present in the United States in specified visa classifications are eligible to receive in state residency status for tuition and fee purposes as prescribed by the Commission on Higher Education. They are not, however, eligible to receive state sponsored tuition assistance/scholarships.

B. Title 8 of the Code of Federal Regulations (CFR) serves as the primary resource for defining visa categories.

62-605. Establishing the Requisite Intent to Become a South Carolina Domiciliary.

A. Resident status may not be acquired by an applicant or student while residing in South Carolina for the sole purpose of enrollment in an institution or for access to state supported programs designed to serve South Carolina residents.

B. If a person asserts that his/her domicile has been established in this State, the individual has the burden of proof. Such persons should provide to the designated residency official of the institution to which they are applying any and all evidence the person believes satisfies the burden of proof. The residency official will consider any and all evidence provided concerning such claim of domicile, but will not necessarily regard any single item of evidence as conclusive evidence that domicile has been established.

C. For independent persons or the parent, spouse, or guardian of dependent persons, examples of intent to become a South Carolina resident may include, although any single indicator may not be conclusive, the following indicia:

1. Statement of full time employment;
2. Designating South Carolina as state of legal residence on military record;
3. Possession of a valid South Carolina driver's license, or if a non-driver, a South Carolina identification card. Failure to obtain this within 90 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility;
4. Possession of a valid South Carolina vehicle registration card. Failure to obtain this within 45 days of the establishment of the intent to become a South Carolina resident will delay the beginning date of residency eligibility;
5. Maintenance of domicile in South Carolina;
6. Paying South Carolina income taxes as a resident during the past tax year, including income earned outside of South Carolina from the date South Carolina domicile was claimed;
7. Ownership of principal residence in South Carolina; and
8. Licensing for professional practice (if applicable) in South Carolina.

D. The absence of indicia in other states or countries is required before the student is eligible to pay in state rates.

62-606. Maintaining Residence.

A. A person's temporary absence from the State does not necessarily constitute loss of South Carolina residence unless the person has acted inconsistently with the claim of continued South Carolina residence during the person's absence from the State. The burden is on the person to show retention of South Carolina residence during the person's absence from the State. Steps a person should take to retain South Carolina resident status for tuition and fee purposes include:

1. Continuing to use a South Carolina permanent address on all records;
2. Maintaining South Carolina driver's license;
3. Maintaining South Carolina vehicle registration;

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4. Satisfying South Carolina resident income tax obligation. Individuals claiming permanent residence in South Carolina are liable for payment of income taxes on their total income from the date that they established South Carolina residence. This includes income earned in another state or country.

B. Active duty members of the United States Armed Forces and their dependents are eligible to pay in state tuition and fees as long as they continuously claim South Carolina as their state of legal residence during their military service. Documentation will be required in all cases to support this claim. South Carolina residents who change their state of legal residence while in the military lose their South Carolina resident status for tuition and fee purposes.

62-607. Effect of Change of Residency.

A. Notwithstanding other provisions of this section, any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated immediately prior to his/her enrollment may enroll at the in state rate. Any dependent person of a legal resident of this state who has been domiciled with his/her family in South Carolina for a period of not less than three years and whose family's domicile in this state is terminated after his/her enrollment may continue to receive in state rates, however, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters. Transfers within or between South Carolina colleges and universities of a student seeking a certificate, diploma, associate, baccalaureate, or graduate level degree does not constitute a break in enrollment.

B. If a dependent or independent person has been domiciled in South Carolina for less than three years, eligibility for in state rates shall end on the last day of the academic session during which domicile is lost. Application of this provision shall be at the discretion of the institution involved. However, a student must continue to be enrolled and registered for classes (excluding summers) in order to maintain eligibility to pay in state rates in subsequent semesters.

62-608. Effect of Marriage.

A. In ascertaining domicile of a married person, irrespective of gender, such a review shall be determined just as for an unmarried person by reference to all relevant evidence of domiciliary intent.

B. If a non-resident marries a South Carolina resident, the non-resident does not automatically acquire South Carolina resident status. The non-resident may acquire South Carolina resident status if the South Carolina resident is an independent person and the non-resident is a dependent of the South Carolina resident.

C. Marriage to a person domiciled outside South Carolina shall not be solely the reason for precluding a person from establishing or maintaining domicile in South Carolina and subsequently becoming eligible or continuing to be eligible for residency.

D. No person shall be deemed solely by reason of marriage to a person domiciled in South Carolina to have established or maintained domicile in South Carolina and consequently to be eligible for or to retain eligibility for South Carolina residency.

62-609. Exceptions.

A. Persons in the following categories qualify to pay in state tuition and fees without having to establish a permanent home in the state for twelve months. Persons who qualify under any of these categories must meet the conditions of the specific category on or before the first day of class of the term for which payment of in state tuition and fees is requested. The following categories apply only to in state tuition and do not apply to

State supported scholarships and grants. Individuals who qualify for in state tuition and fees under the following exceptions do not automatically qualify for LIFE, SC HOPE or Palmetto Fellows Scholarships.

1. “Military Personnel and their Dependents”: Members of the United States Armed Forces who are permanently assigned in South Carolina on active duty and their dependents are eligible to pay in state tuition and fees. When such personnel are transferred from the State, their dependents may continue to pay in state tuition and fees as long as they are continuously enrolled. Such persons (and their dependents) may also be eligible to pay in state tuition and fees as long as they are continuously enrolled after their discharge from the military, provided they have demonstrated an intent to establish a permanent home in South Carolina and they have resided in South Carolina for a period of at least twelve months immediately preceding their discharge. Military personnel who are not stationed in South Carolina and/or former military personnel who intend to establish South Carolina residency must fulfill the twelve month “physical presence” requirement for them or their dependents to qualify to pay in state tuition and fees.

2. “Faculty and Administrative Employees with Full Time Employment and their Dependents”: Full time faculty and administrative employees of South Carolina state supported colleges and universities and their dependents are eligible to pay in state tuition and fees.

3. “Residents with Full Time Employment and their Dependents:” Persons who reside, are domiciled, and are full time employed in the State and who continue to work full time until they meet the twelve month requirement and their dependents are eligible to pay in state tuition and fees, provided that they have taken steps to establish a permanent home in the State. Steps an independent person must take to establish residency in South Carolina are listed in Section 62-605 entitled (“Establishing the Requisite Intent to Become a South Carolina Domiciliary”).

4. “Retired Persons and their Dependents:” Retired persons who are receiving a pension or annuity who reside in South Carolina and have been domiciled in South Carolina as prescribed in the Statute for less than a year may be eligible for in state rates if they maintain residence and domicile in this State. Persons on terminal leave who have established residency in South Carolina may be eligible for in state rates even if domiciled in the State for less than one year if they present documentary evidence from their employer showing they are on terminal leave. The evidence should show beginning and ending dates for the terminal leave period and that the person will receive a pension or annuity when he/she retires.

B. South Carolina residents who wish to participate in the Contract for Services program sponsored by the Southern Regional Education Board must have continuously resided in the State for other than educational purposes for at least two years immediately preceding application for consideration and must meet all other residency requirements during this two year period.

62-610. Application for Change of Resident Status.

A. Persons applying for a change of resident classification must complete a residency application/petition and provide supporting documentation prior to a reclassification deadline as established by the institution.

B. The burden of proof rests with those persons applying for a change of resident classification who must show required evidence to document the change in resident status.

62-611. Incorrect Classification.

A. Persons incorrectly classified as residents are subject to reclassification and to payment of all non resident tuition and fees not paid. If incorrect classification results from false or concealed facts, such persons may be charged tuition and fees past due and unpaid at the out of state rate. The violator may also be subject to administrative, civil, and financial penalties. Until these charges are paid, such persons will not be allowed to receive transcripts or graduate from a South Carolina institution.

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B. Residents whose resident status changes are responsible for notifying the Residency Official of the institution attended of such changes.

62-612. Inquiries and Appeals.

A. Inquiries regarding residency requirements and determinations should be directed to the institutional residency official.

B. Each institution will develop an appeals process to accommodate persons wishing to appeal residency determinations made by the institution's residency official. Each institutions appeal process should be directed by that institutions primary residency officer, in conjunction with those individuals who practice the application of State residency regulations on a daily basis. The professional judgment of the residency officer and administrators will constitute the institutional appeal process. Neither the primary residency official nor appellate official(s) may waive the provisions of the Statute or regulation governing residency for tuition and fee purposes.

Fiscal Impact Statement:

There will be no additional cost to the State or to the public or private colleges and universities of South Carolina associated with administering this revised regulation.

Statement of Rationale:

This regulation is being promulgated to provide procedures for the institutions in determining who meets the eligibility criteria to pay in-state tuition and fees and eligibility for state-supported tuition assistance or scholarship programs.

Document No. 3180
DEPARTMENT OF INSURANCE
CHAPTER 69

Statutory Authority: 1976 Code Sections 38-3-110 and 38-9-80

69-52. Actuarial Opinion and Memorandum Regulation

Synopsis:

The South Carolina Department of Insurance proposes to amend Regulation 69-52, Actuarial Opinion and Memorandum Regulation, to require that all life insurance companies and fraternal benefit societies licensed in this state file an actuarial opinion based on an asset adequacy analysis. Currently, certain insurance companies and fraternal benefit societies licensed in this state are exempt from filing an actuarial opinion based on an asset adequacy analysis. The proposed amendments 1) provide that all companies must perform an asset adequacy analysis; 2) allow greater flexibility for states to accept actuarial opinions based on foreign states' laws; 3) update the documentation requirements to be incorporated into the asset adequacy analysis; and 4) provide that a "Regulatory Asset Analysis Issues Summary" be prepared that summarizes the major assumptions and economic scenarios embedded in the actuarial memorandum. These amendments are based upon the most recent version of the NAIC model regulation that will become an accreditation standard for actuarial opinions issued on or after January 1, 2008. A Notice of Drafting for the proposed regulation was published in the South Carolina State Register on October 26, 2007. The proposed regulation requires Legislative Review.

Instructions:

Replace R. 69-52 with the text below, which amends Sections I, II, III, IV, V, VIII, IX, and X, deletes Sections VI and VII, renumbers Section VIII as Section VI and Section IX as Section VII, and incorporates Section X into new Section VII.

Text:

69-52. Actuarial Opinion And Memorandum Regulation

Section I. Purpose

The purpose of this regulation is to prescribe:

A. Requirements for statements of actuarial opinion that are to be submitted in accordance with Section 38-9-180 of the Code of Laws of South Carolina (hereinafter "Standard Valuation Law"), and for memoranda in support thereof;

B. Rules applicable to the appointment of an appointed actuary; and

C. Guidance as to the meaning of "adequacy of reserves."

Section II. Authority

This regulation is issued pursuant to the authority vested in the Director of the Department of Insurance of the State of South Carolina under Section 38-9-180 of the Code of Laws of South Carolina. This regulation will take effect for annual statements for the year 2008.

Section III. Scope

This regulation shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies that are authorized to reinsure life insurance, annuities or accident and health insurance business in this State. This regulation shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the Director shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the Director's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This regulation shall be applicable to the 2008 Annual Statement and all subsequent annual statements filed with the office of the Director. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this regulation, and a memorandum in support thereof in accordance with Section 7 of this regulation, shall be required each year.

Section IV. Definitions

A. "Actuarial Opinion" means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Section 6 of this regulation and with applicable Actuarial Standards of Practice.

B. "Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

C. "Annual statement" means that statement required by the Standard Valuation Law to be filed by the company with the office of the Director annually.

D. "Appointed actuary" means an individual who is appointed or retained in accordance with the requirements set forth in Section 5C of this regulation to provide the actuarial opinion and supporting memorandum as required by the Standard Valuation Law.

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E. "Asset adequacy analysis" means an analysis that meets the standards and other requirements referred to in Section 5D of this regulation.

F. "Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this regulation.

G. "Director" means the Director of Insurance of this State.

H. "Qualified actuary" means an individual who meets the requirements set forth in Section 5B of this regulation.

Section V. General Requirements

A. Submission of Statement of Actuarial Opinion

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the 2008 Annual Statement the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Section 6 of this regulation.

(2) Upon written request by the company, the Director may grant an extension of the date for submission of the statement of actuarial opinion.

B. Qualified Actuary. A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the Director (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:

(a) Violated any provision of, or any obligation imposed by, the insurance statutes of this State or other law in the course of his or her dealings as a qualified actuary;

(b) Been found guilty of fraudulent or dishonest practices;

(c) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(d) Submitted to the Director during the past five (5) years, pursuant to this regulation, an actuarial opinion or memorandum that the Director rejected because it did not meet the provisions of this regulation including standards set by the Actuarial Standards Board; or

(e) Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the Director of any action taken by any Director of any other state similar to that under Paragraph (4) above.

C. Appointed Actuary. An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the Director timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements set forth in Subsection B. Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Director timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Subsection B. If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

D. Standards for Asset Adequacy Analysis. The asset adequacy analysis required by this regulation:

(1) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with this regulation; and

(2) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

E. Liabilities to be Covered.

(1) Under authority of the Standard Valuation Law, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 5, 6 and 7, and claim liabilities in Exhibit 8, Part 1 and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in the Standard Valuation Law, the company shall establish the additional reserve.

(3) Additional reserves established under Paragraph (2) above and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

Section VI. Statement of Actuarial Opinion Based on an Asset Adequacy Analysis

A. General Description. The statement of actuarial opinion submitted in accordance with this section shall consist of:

- (1) A paragraph identifying the appointed actuary and his or her qualifications (see Subsection B(1));
- (2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, (see Subsection B(2)) and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;
- (3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see Subsection B(3)), supported by a statement of each such expert in the form prescribed by Subsection E; and
- (4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities (see Subsection B(6)).
- (5) One or more additional paragraphs will be needed in individual company cases as follows:
 - (a) If the appointed actuary considers it necessary to state a qualification of his or her opinion;
 - (b) If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;
 - (c) If the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release;
 - (d) If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

B. Recommended Language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

"I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

For a consulting actuary, the opening paragraph should include a statement such as:

"I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of

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company] to render this opinion as stated in the letter to the Director dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

(2) The scope paragraph should include a statement such as:
 “I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20[]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts—Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b)	Other Amount (3)	Total Amount (1)+(2)+(3) (4)
Exhibit 8					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability—Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
Exhibit 9					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					
Exhibit 10					
Premium and Other Deposit Funds (Column 5, Line 14)					

Guaranteed Interest Contracts (Column 2, Line 14)					
Other (Column 6, Line 14)					
Supplemental Contracts and Annuities Certain (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 10 (Column 1, Line 14)					
Exhibit 11 Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					
IMR (General Account, Page ___ Line ___)					
(Separate Accounts, Page ___ Line ___)					
AVR (Page ___ Line ___)				(c)	
Net Deferred and Uncollected Premium					

Notes:

- (a) The additional actuarial reserves are the reserves established under Paragraph (2) of Section 5E.
- (b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Section 5D of this regulation, by means of symbols that should be defined in footnotes to the table.

(c) Allocated amount of Asset Valuation Reserve (AVR).

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:

“I have relied on [name], [title] for [e.g., “anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios” or “certain critical aspects of the analysis performed in conjunction with forming my opinion”], as certified in the attached statement. I have reviewed the information relied upon for reasonableness.”

A statement of reliance on other experts should be accompanied by a statement by each of the experts in the form prescribed by Section 6E.

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(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company’s current annual statement.”

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:

“In forming my opinion on [specify types of reserves] I relied upon data prepared by [name and title of company officer certifying in force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company’s current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary.”

The section shall be accompanied by a statement by each person relied upon in the form prescribed by Subsection E.

(6) The opinion paragraph should include a statement such as:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

(a) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(b) Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

(c) Meet the requirements of the Insurance Law and regulation of the state of [state of domicile]; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

(d) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

(e) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the discretion of the Director, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material changes which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

Note: Choose one of the above two paragraphs, whichever is applicable.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

C. Assumptions for New Issues

The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Section 6.

D. Adverse Opinions

If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

E. Reliance on Information Furnished by Other Persons

If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

F. Alternate Option

(1) The Standard Valuation Law gives the Director broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of Subsection B(6)(c), the Director may make one or more of the following additional approaches available to the opening actuary:

(a) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the Director chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(b) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the Director for approval of that request have been met." If the Director chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the Director. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the Director has not denied the request by that date.

(c) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the required comparison as specified by this state."

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(i) If the Director chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below) for which the required comparison shall be provided will be published. If a company chooses to use this Actuarial Opinion and Memorandum Regulation alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard
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(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(v) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Notwithstanding the above, the Director may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within sixty (60) days of the request or such other period of time determined by the Director after consultation with the company, the Director may contract an independent actuary at the company’s expense to prepare and file the opinion.

Section VII. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary

A. General

(1) In accordance with the Standard Valuation Law, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves. The memorandum shall be made available for examination by the Director upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the insurance department or subject to automatic filing with the Director.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Section 5B of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Director requests a memorandum and no such memorandum exists or if the Director finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Director may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Director.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Director; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Director and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Director pursuant to the statute governing this regulation. The reviewing actuary shall not be

an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

(5) In accordance with the Standard Valuation Law, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection C. The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

B. Details of the Memorandum Section Documenting Asset Adequacy Analysis

When an actuarial opinion is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Section 5D of this regulation and any additional standards under this regulation. It shall specify:

- (1) For reserves:
 - (a) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
 - (b) Source of liability in force;
 - (c) Reserve method and basis;
 - (d) Investment reserves;
 - (e) Reinsurance arrangements;
 - (f) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;
 - (g) Documentation of assumptions to test reserves for the following:
 - (i) Lapse rates (both base and excess);
 - (ii) Interest crediting rate strategy;
 - (iii) Mortality;
 - (iv) Policyholder dividend strategy;
 - (v) Competitor or market interest rate;
 - (vi) Annuitization rates;
 - (vii) Commissions and expenses; and
 - (viii) Morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (2) For assets:
 - (a) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
 - (b) Investment and disinvestment assumptions;
 - (c) Source of asset data;
 - (d) Asset valuation bases; and
 - (e) Documentation of assumptions made for:
 - (i) Default costs;
 - (ii) Bond call function;
 - (iii) Mortgage prepayment function;
 - (iv) Determining market value for assets sold due to disinvestment strategy; and
 - (v) Determining yield on assets acquired through the investment strategy.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (3) For the analysis basis:
 - (a) Methodology;
 - (b) Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;
 - (c) Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

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(d) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); and

(e) Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis;

(4) Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis;

(5) Summary of results; and

(6) Conclusions.

C. Details of the Regulatory Asset Adequacy Issues Summary

(1) The regulatory asset adequacy issues summary shall include:

(a) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(b) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(c) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(d) Comments on any interim results that may be of significant concern to the appointed actuary;

(e) The methods used by the actuary to recognize the impact of reinsurance on the company’s cash flows, including both assets and liabilities, under each of the scenarios tested; and

(f) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

D. Conformity to Standards of Practice. The memorandum shall include a statement:

“Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.”

E. Use of Assets Supporting the Interest Maintenance Reserve and the Asset Valuation Reserve

An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

F. Documentation. The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

G. The Director may prescribe additional scenarios for use in the asset adequacy analysis if the Director is not satisfied with the scenarios upon which the asset adequacy opinion is based. If the additional scenarios are to be performed by all licensed companies, the additional required scenarios must be published in the form of a Bulletin.

Fiscal Impact Statement:

There will be no increased costs to the state or its political subdivisions.

Statement of Rationale:

All life insurers are required to file an actuarial opinion with their annual financial statement. Currently Regulation 69-52, Actuarial and Opinion Memorandum, establishes a two-tier system for these opinions. Companies whose admitted assets exceed \$500 million are required to conduct sufficient tests to certify that their assets make adequate provision for their liabilities, i.e., their actuaries must perform an asset adequacy analysis. Under certain conditions, companies whose admitted assets fall below \$500 million are exempt from this requirement, and need only to certify that their reserves are computed in accordance with formulas specified in the law.

The proposed amendments remove these exemptions and require all companies to demonstrate the adequacy of reserves. The rationale for making all companies to demonstrate the adequacy for reserves is: (1) Uniform Actuarial Opinions are important, both in terms of protection and the integrity of the statutory accounting system; (2) there is no precedence in GAAP, Risk Based Capital requirements etc. for different standards based on size; (3) formula reserves alone may not be sufficient; and foreign states are more likely to accept a domiciliary state's actuarial opinion memorandum if the reserves are tested for adequacy. The proposed amendments also allow greater flexibility for states to accept a state of domicile opinion from another state and specify the alternate options to be used for this purpose. This flexibility is intended to provide relief for the companies from keeping abreast of reserve requirements in the adopting states and to preserve the principle of a state's right to adopt the laws it feels are best suited to its circumstances. Third, since the adoption of Regulation 69-52 new products have emerged and new insights have been gained regarding key aspects that ought to be documented in the memorandum. The amendments to Regulation 69-52 include updated requirements for documentation of the various assumptions, economic scenarios, and product features incorporated into the asset adequacy analysis. Finally, the amendments include a requirement that a "Regulatory Asset Adequacy Issues Summary" be prepared that summarizes the major assumptions and economic scenarios embedded in the actuarial memorandum. This amendment is intended to increase the efficiency of reviewing the actuarial opinion and memorandum.

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Document No. 3181
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8

Statutory Authority: 1976 Code Sections 40-1-40, 10-5-220, et seq., and 40-1-70

8-700 through 8-703. South Carolina Barrier Free Building Design

Synopsis:

The South Carolina Building Codes Council is amending regulations for the Barrier Free Design Act by repealing Regulations 19-400 through 19-400.3 and replacing with Regulations 8-700 through 8-703 so they are accessible through the Department of Labor, Licensing and Regulation rather than through the Budget and Control Board. The proposed regulatory amendments conform to those statutory amendments as well as provide general updated language.

Instructions:

- Repeal Regulations 19-400 through 19-400.3
- Replace with Regulations 8-700 through 8-703 as printed below

Text:

Article 7
South Carolina Barrier Free Building Design

8-700. South Carolina Barrier Free Building Design.

8-701. Authority.

(A) With the exception of one and two family detached dwellings and other residential buildings to be offered for sale as individual dwelling units, every building or structure shall have all levels and areas made accessible to disabled persons in accordance with the latest edition of the International Code Council/American National Standards Institute, Inc. (ICC/ANSI) document A117.1, and the requirements of this section.

(B) Buildings containing dwelling units that are to be offered for rent, such as apartments, hotels, dormitories, etc., shall provide the following number of fully accessible units.

Total Number of Units	Number of Accessible Units
0 thru 19	1
20 or more	5%

Fractions of 1/2 or more shall be counted as a whole unit

8-702. Application.

(A) There shall be no construction, alteration or leasing of a government building nor construction or renovation of a public building except in conformity with these Regulations. If the occupancy as defined in the Building Code adopted by Section 6-9-50, of an existing building is changed, that building shall be made to conform to the requirements of these Regulations for the new occupancy. If the occupancy of a portion of an existing building is changed, then only such portion which is changed shall comply.

8-703. Administration.

(A) Interpretation of these Regulations and provisions herein shall be the responsibility of the local building officials, in consultation with the appropriate State Officials where necessary. However, request for interpretation may be forwarded to the Accessibility Committee for the South Carolina Building Codes Council for resolution.

(B) The enforcement of these Regulations including investigations shall be the responsibility of the Building Official of each county or municipality within the state. If the county or the municipality does not have a Building Official, the South Carolina Building Codes Council shall enforce these Regulations.

(C) Where a conflict exists between these Regulations and Section 10-5-210 through 10-5-320 of the Code of Laws of South Carolina, 1976, as amended, these Regulations shall be superseded and governed by the applicable code section. Where there is conflict between these Regulations and local and municipal ordinances, these Regulations govern and shall be followed.

(D) All meetings and conferences, of an agency of this State, in which participation by the public is invited or anticipated, must be held in a place and manner that is accessible to persons with disabilities, unless there are compelling reasons why specific elements of accessibility cannot be provided. In such instances where specific elements of accessibility cannot be provided, the meeting or conference areas shall be as accessible as reasonably possible.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The amendments are necessary to move the regulations to their appropriate location under the Department of Labor, Licensing and Regulation (from the Budget and Control Board). The amendments are also needed to remove unnecessary language and update the document references.

Document No. 3182
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8

Statutory Authority: 1976 Code Sections 6-9-40 and 40-1-70

8-300 through 8-501. Building Codes

Synopsis:

The South Carolina Building Codes Council is amending regulations for the Building Codes Practice Act by repealing Regulations 8-300 through 8-501 (Articles 3 through 5). The proposed regulatory amendments conform to those statutory amendments.

Instructions:

Repeal Regulations 8-300 through 8-501 (Articles 3 through 5) in their entirety.

Text:

Repeal

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The amendments to the regulations are necessary to remove conflicts between the 2003 and 2006 editions of the building codes, and to remove unnecessary language from the regulations.

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Document No. 3183
DEPARTMENT OF LABOR, LICENSING AND REGULATION
BUILDING CODES COUNCIL
CHAPTER 8

Statutory Authority: 1976 Code Sections 23-43-40 and 40-1-70

8-600 through 8-628. Modular Buildings Construction

Synopsis:

The South Carolina Building Codes Council intends to amend regulations for the Modular Building Construction Act by repealing Regulations 19-460 through 19-460.27 and replacing with Regulations 8-600 through 8-628 so that they are accessible through the Department of Labor, Licensing and Regulation rather than through the Budget and Control Board. The proposed regulatory amendments conform to those statutory amendments as well as provide general updated language.

Instructions:

Repeal Regulations 19-460 through 19-460.27
Replace with Regulations 8-600 through 8-628 as printed below.

Text:

Article 6
Modular Buildings Construction

8-600. The South Carolina Modular Buildings Construction Act.

8.601. Purpose.

(1) The provisions of these regulations are adopted in implementation of the South Carolina Modular Buildings Construction Act of 1984, Chapter 43 of Title 23 of the South Carolina Code of Laws, 1976 as amended, and are intended to provide uniform standards for modular construction, while preserving and recognizing local governmental responsibility in regard to utilization of modular buildings within a community.

(2) Regulations provided herein are applicable to all modular buildings which are manufactured for and subsequently erected within the State of South Carolina, and all modular buildings manufactured in South Carolina erected in other states under reciprocal agreements. These regulations apply to all buildings erected in the State of South Carolina, regardless of whether or not building codes are adopted and administered in the areas where erection takes place.

(3) The definition of modular building does not include mobile or manufactured homes, as defined by the U.S. Department of Housing and Urban Development, which is any residential unit constructed to the Federal Mobile Home Construction and Safety Standards, 42 USC Sections 5401 and 24 CFR 3282 and 3283.

8-602. Definitions.

For the purpose of these regulations, the following words shall have the meanings indicated:

(1) "Act" means the South Carolina Modular Buildings Construction Act of 1984, Chapter 43 of Title 23 of the South Carolina Code of Laws, 1976 as amended.

(2) "Approved" means conforming to the requirements of Council.

(3) "Building System" means plans, specifications and documentation for a system of modular buildings or for a type or a system of building components, which may include structural, electrical, mechanical, plumbing and fire protection systems, and other building systems affecting life safety.

- (4) "Closed Construction" means that condition when any building, component, assembly, subassembly, or system is manufactured in such a manner that all portions cannot be readily inspected at the erection site without disassembly.
- (5) "Component" means any assembly, subassembly, or combination of elements of closed construction, for use as a part of a building, which may include structural, electrical, mechanical, plumbing and fire protection systems, and other building systems affecting life safety.
- (6) "Council" means the South Carolina Building Codes Council as established by Section 6-9-63 of the South Carolina Code of Laws.
- (7) "Custom Building" means any building manufactured to individual system specifications and not intended for duplication or repetitive manufacture.
- (8) "Damage" means damage or-breakage occurring to a modular building or any part thereof causing it to not comply with these regulations.
- (9) "Days" shall be construed to be work days, and shall not include Saturdays, Sundays, or holidays.
- (10) "Department" means the Department of Labor, Licensing and Regulation for the State of South Carolina.
- (11) "Equipment" means all materials, appliances, devices, fixtures, fittings, or accessories installed in or used in the manufacture and assembly of a modular building.
- (12) "Field technical service" means clarification in the field by the Department of technical data relating to the application of the regulations.
- (13) "Labeled" means equipment bearing a label of certification by an approved listing organization.
- (14) "Listed" means equipment or materials included in a list published by an approved listing organization.
- (15) "Local Building Official" means the officer or other designated authority, or duly authorized representative, charged with the administration and enforcement of building codes and standards, for any county, city, town, or other political subdivision of the state.
- (16) "Manufacturer" means any person, firm, or corporation which manufactures or assembles modular buildings.
- (17) "Manufacturer's Representative" means any person employed by a modular building manufacturer who sells, or offers for sale, modular buildings or components.
- (18) "Model" means a specific modular building design which is based on size, room arrangement, method of construction, and arrangement of plumbing, mechanical, or electrical equipment and systems therein.
- (19) "Open Construction" means any modular building, building component, assembly, or system manufactured in such a manner that all parts or processes of manufacture can be readily inspected at the installation site without disassembly.
- (20) "Site" means the location on which a modular building is erected or is to be erected.
- (21) "Standard Design" means any building, system, model, series, or component intended for duplication or repetitive manufacture.
- (22) "System Prototype" means a specific design of modular building designated by the manufacturer to be the standard for reproduction. A system prototype may include options that do not affect the performance or function of any system.
- (23) "System Recognition" means a system of construction approved by an approved inspection agency.
- (24) "Valuation" means the total fair market value of a structure in its completed state, including the combined costs of the modular building or components, the foundation system, porches steps and other "add-ons," additional required mechanical equipment and the installation and connection of all utilities.

8-603. Department Duties and Responsibilities.

- (1) The Department shall enforce and interpret the Act and these regulations.
- (2) The Department shall require filing and final approval of all quality control manuals, system, and model design plans changes as they occur.
- (3) Plans, manuals, and related documents will be accepted only after approval of and submittal by an approved inspection agency, but are subject to review as deemed necessary by the Department.
- (4) Any person may request field technical services provided such requests are submitted to the Department in writing and are subject to the fee schedule in these regulations.

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8-604. Adoption of Model Codes.

- (1) The design and fabrication of modular buildings shall comply with the requirements of the building codes as listed in Chapter 9, Title 6, of the South Carolina Code of Laws, 1976 as amended.
- (2) Energy code. The design and installation of thermal performance standards for all modular buildings shall comply with the requirements of Chapter 10, Title 6, of the South Carolina Code of Laws, 1976 as amended.
- (3) Building official. Where reference is made, in any building code, to the building, plumbing, gas or mechanical official, administrative authority, enforcement official or any such authoritative person, it shall mean the Council administration.
- (4) All service connections and foundations installed at the building site shall be regulated by the local building official.
- (5) Barrier Free Design. The design and erection of modular buildings for the purpose of public use must be in compliance with the Barrier Free Design Standard, Code of Laws of South Carolina, 1976 as amended, Sections 10-52-10 through 10-52-50, and adopted regulations.

8-605. Enforcement Authority.

- (1) It is the intent of the Act and these regulations, that those areas of authority rightfully belonging to the local government are specifically and entirely reserved thereto. Such areas are land use, zoning, fire zones, site development and subdivision control, as well as the review and regulation of architectural and aesthetic requirements. Such requirements and regulations not in conflict with the provisions of the Act or these regulations, which currently exist or may be enacted, must be reasonable and uniformly applied and enforced without distinction as to whether such building is modular or constructed on site in a conventional manner. Local zoning ordinances shall not restrict location of, or otherwise discriminate against modular buildings certified in accordance with the Act and these regulations.
- (2) The local government shall furthermore be reserved the authority to:
 - (a) require a complete set of plans and specifications as certified by the Department for each modular building erected within its jurisdiction; and
 - (b) require that all permits be obtained before erection of any unit on a building site; and
 - (c) approve and inspect foundation systems and all connections thereto; and
 - (d) approve and inspect all electrical, plumbing, gas, or mechanical systems from the source of service to the point at which they connect to the building.
- (3) The local building official shall report any modular building that has been damaged enroute to the erection site.
- (4) Any modular building unit bearing the Council's certification label shall be deemed to comply with the requirements of all building codes, ordinances, or regulations which govern building construction, enacted by any local government.
- (5) The local building official shall require that all modular buildings bear a certification label before issuing a Certificate of Occupancy.
- (6) The local building official shall report any violations of the Act or these regulations to the Department.

8-606. Delegation of Inspection Authority: Approved Inspection Agency's Qualifications, Acceptance Requirements.

- (1) The Council shall consider an organization for acceptance as an approved inspection agency upon receipt of an application accompanied by a prospectus detailing its capabilities to perform in that capacity.
- (2) Each organization applying for approval shall indicate in its application:
 - (a) its qualifications to inspect equipment and systems; and
 - (b) that the organization is not controlled by any manufacturer or supplier subject to the Council's jurisdiction; and
 - (c) that it will make available specific information as required by the Council; and
 - (d) that it retains a building construction oriented South Carolina registered professional engineer or architect who shall be responsible for compliance with these regulations; and
 - (e) its organizational structure; and
 - (f) the education and qualification of the employees to be doing the actual inspection and plan review; and
 - (g) its agreement to perform inspections at the frequency specified in these regulations; and

(h) proof that all personnel performing inspections are certified by a testing agency recognized by the Department.

8-607. Approved Inspection Agency Authority.

(1) An approved inspection agency shall conduct inspections at the manufacturing plant to determine compliance with the approved plans. Violations of any of the provisions of these regulations or variations from the approved plans may be cause for revocation of the plan approval and shall be reported to the Department within one (1) day after discovery.

(2) Failure on the part of an approved inspection agency to fulfill its responsibilities or notify the Department of violations of these regulations or variations from the approved plans is cause for revocation of its approval.

(3) An approved inspection agency shall evaluate modular building plans for design approval before submission for final review by the Department.

(a) The design review submittal shall include a completed application on forms obtainable from the Department and three (3) complete sets of scaled plans, specifications and structural, electrical, mechanical, and energy calculations prepared by an architect or engineer licensed to practice in the State of South Carolina; quality control manuals, calculations, and any required test results for each system and prototype to be approved. The approved inspection agency shall designate its approval by affixing its seal to each print, the cover of the quality control manual, and supporting data prior to submittal.

(b) The approved inspection agency shall submit for the manufacturer, a request for Department review which may include any or all elements of building systems such as structural, mechanical, plumbing, and electrical components. All modular building system submittals must include at least the following:

- (1) Structural:
 - (i) details specifying methods of field connection of units or models to each other and foundations; and
 - (ii) all exterior elevations; and
 - (iii) elevations and details of elements, walls or sections thereof providing resistance to vertical loads or lateral forces; and
 - (iv) floor plans and floor framing plans; and
 - (v) details of framing system showing direction of face grain of plywood, blocking, connections, etc.;
- and
- (vi) vertical load calculations; and
- (vii) lateral force calculations; and
- (viii) overturning and uplift calculations; and
- (ix) details of all structural connections such as chord splices, corner and wall intersection details, post and beam splices, etc., (both inplant and onsite connections must be shown); and
- (x) complete roof framing plan showing method of framing, direction of face grain of plywood, connections, etc., roof covering material and roofing specifications; and
- (xi) cross sections as necessary to identify major building components; and
- (xii) information for plywood when used, such as thickness, index number, grade, direction of face grain, etc., and lumber grades; and
- (xiii) details of flashing, such as at openings and at penetrations through roofs flashing material and gage to be used; and
- (xiv) attic access and attic ventilation; and
- (xv) wall and soffit material as well as finish; and
- (xvi) interior wall and ceiling finish; and
- (xvii) fire separation details, when required by code; and
- (xviii) opening treatment for doors and windows including door swings; and
- (xix) all foundation vents and under floor access; and
- (xx) structural steel materials, sizes, finishes, and connection details; and
- (xxi) reinforcing, concrete and mesh materials, strengths, grades, sizes, spacing and details in accordance with "Building Code Requirements for Reinforced Concrete, ACI 318"; and
- (xxii) all work that is required on the building site; and
- (xxiii) details of all elements for access and use by people with disabilities.

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(2) Plumbing:

- (i) plan and riser diagram of the plumbing layout showing size of piping, fittings, traps, vents, cleanouts and valves, etc., for gas, water, drainage, waste, and vent systems; and
- (ii) plumbing materials, make, model, and rating/capacity of fixtures; and
- (iii) make and model of safety controls and their locations; and
- (iv) intervals and method of horizontal piping support; and
- (v) vertical piping and valve supports; and
- (vi) location of flues and vents above roofs and required clearances from air intakes, other vents and flues, etc.; and
- (vii) method of testing.

(3) Mechanical:

- (i) location of all equipment and appliances; and
- (ii) listed or labeled appliances, units or equipment; and
- (iii) heat loss and heat gain calculations; and
- (iv) BTU, input and output rating of all appliances and equipment; and
- (v) duct and register locations, including size, and materials; and
- (vi) clearance from combustible material or surfaces for all appliances, equipment, ducts, flues, and chimneys; and
- (vii) method of providing required combustion air and return air; and
- (viii) location of flues, vents and chimneys, and clearances for air intakes; and
- (ix) details and approvals for dampers in ducts penetrating fire separation walls, floors and ceilings; and
- (x) method of testing; and
- (xi) method of securing every appliance and its components to avoid displacement and movement from vibration and road shock.

(4) Electrical:

- (i) plan and detail of service equipment, including service entrance, conductors, service raceway and clearances, above ground, and above structures; and
- (ii) method and detail for grounding service equipment; and
- (iii) diagram of the entire electrical installation; and
- (iv) complete load calculations for service and feeders; and
- (v) identification and sizes of all feeders and branch circuits; and
- (vi) size, rating, and location of main disconnect/overcurrent protective devices; and
- (vii) method of interconnection between modules or units and location of connections; and
- (viii) location of all outlets and junction boxes; and
- (ix) the protection of nonmetallic sheathed cable in locations subject to mechanical damage; and
- (x) method of backing, mounting, and strapping of fixtures and wiring; and
- (xi) name plate rating of all appliances and equipment; and
- (xii) method of testing; and
- (xiii) labeling of wiring, fixtures, and equipment.

(4) Calculations and test procedures. When the composition or configuration of elements, assemblies, or details of structural members are such that calculations of their safe load carrying capacity, basic structural integrity, or fire resistance cannot be accurately determined in accordance with generally established principles of engineering design, such structural properties, or fire resistance of the members or assemblies may be established by an approved inspection agency.

(5) Design plan approval expiration. Design plan approvals shall expire on the effective date of any applicable change to these regulations and the building codes referenced herein, when the change affects a system or component of the model involved.

(6) It shall be the responsibility of the manufacturer to submit an application for design plan renewal to the Department.

(7) Revocation of approval. Revocation of a plan approval shall occur upon the failure of the manufacturer to comply with the provisions of these regulations.

(8) Nonconforming application. If an application does not conform to the requirements of these regulations, the applicant shall be notified in writing. If corrections have not been received by the Department within ninety (90) days of such notice, the application will be deemed abandoned. Subsequent submission shall be as for a new application.

(9) Evidence of Department approval. Approved plans and specifications shall be evidenced by acknowledgment of the Department. Approved copies of the plans and specifications shall be returned to the manufacturer with a letter indicating the limitations of the approval. A copy of the letter shall be available for inspection use at each place of manufacture.

(10) Manufacturer's unit data plate. The manufacturer shall install on all modular building units, a data plate which shall contain, but not be limited to the following design information:

- (a) maximum live load; and
- (b) maximum snow load; and
- (c) maximum wind load; and
- (d) seismic zone; and
- (e) thermal transmittance value (Uo) of: walls, roof/ceiling, and floors.

(11) The data plate shall be permanently mounted in a conspicuous location.

(12) Manufacturer's component data plate. The manufacturer shall install on each modular component or package of modular components a data plate which indicates the limiting characteristics and design criteria of the components for determining how they can be installed and utilized within their capabilities.

8-608. Quality Control Procedures.

(1) The manufacturer shall establish a written agreement with an inspection agency approved by the Department, clearly stating the quality control procedures which it shall institute in its manufacturing facilities. The quality control procedures shall be documented in manual form, which the manufacturer shall submit to the approved inspection agency for approval. The quality control program outlines must comply with these regulations and be approved by the Department.

(2) The quality control manual shall include quality control procedures for the modular building manufacturing process such as, construction sequence; compliance of basic materials with specifications; frequency of inspection; administrative procedures and samples of quality control forms to be used; and, system description for retention of quality control records.

(3) The manufacturer shall designate an employee to be responsible for the quality control program in its plant and to maintain records to substantiate that each modular unit has been inspected in accordance with the approved plans and specifications.

(4) All modular buildings or components shall be manufactured in accordance with the building codes adopted in these regulations and the quality control procedures established by the manufacturer and accepted by the approved inspection agency and the Department.

(5) The Department shall perform a minimum of one (1) annual audit, at the address of record, for each licensed manufacturing facility and approved inspection agency, with or without notice.

8-609. Change in Status, Alterations.

(1) Changes to approved plans.

(a) If the manufacturer proposes to change any portion of its system or model designs, or if the Council regulations are amended to necessitate such change, it shall be required to submit to the Department, through its approved inspection agency; three (3) sets of detailed, supplemental plans. Plans shall be accompanied by a transmittal of supplementary plan application form, obtainable from the Department and the appropriate plan filing fee.

(b) A model name or designation may be changed or added prior to the expiration date by filing an amended application.

(c) If the manufacturer proposes changes in the quality control manual or procedures, three (3) copies of the changes shall be submitted to the Department through the approved inspection agency.

(2) Change of name, address, or ownership. In the event of a change of name, address, or ownership of a modular building manufacturer, the owner, or an officer shall notify the Department in writing within ten (10) days of such change.

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(3) Discontinuance of manufacturer. When a manufacturer discontinues an approved model, the manufacturer shall, within ten (10) days, advise the Department of the date of the discontinuance and return all certification labels allocated to the model.

(4) Existing model approvals. In the event of amendment of these regulations or the building codes referenced herein, which will require changes to an approved model design, the Department shall notify the manufacturer of such changes, and shall allow the manufacturer ninety (90) days from the date of such notification, or such additional time as the Department shall deem reasonable, in which to submit revised plans for model approval.

(5) Revised model plans submitted pursuant to this section shall be processed as a supplemental detail, with appropriate fees.

(6) Alteration or conversion. Any unauthorized alteration or conversation made to an approved modular building prior to initial erection shall void the approval. The state certification label(s) affixed to the building shall be returned to or be confiscated by the Department.

(7) Any alteration or conversion made to an approved modular building after initial erection shall void the approval and certification label, and, be subject to the provisions of the building inspection program for the jurisdiction in which it is located.

8-610. Alternate Methods and Materials.

(1) The provision of these regulations are not intended to prevent the use of any material, appliance, device, system arrangement, or method of construction not specifically prescribed in accepted model codes, provided any such alternate has been approved by the Department.

(2) The Department may approve alternates if it finds that the proposed design is satisfactory and that the material, appliance, device arrangement, method, system, or work offered is at least the equivalent in performance, quality, strength, effectiveness, fire resistance, durability, and safety.

(3) Listed or labeled equipment and systems may be disapproved by the Department, if it determines that they are not adequate to serve their intended purposes.

(4) All material submitted by the manufacturer to the Department in the form of plans, engineering data, test results quality control manual etc., will be considered as proprietary information of the applicant until such time as approval has been issued by the Department.

8-611. Approved Inspection Agency: Inspection.

(1) Inplant inspections. The approved inspection agency shall conduct announced and unannounced inspections at the manufacturing site to review any or all aspects of manufacturer's production and quality control procedures. The approved inspection agency shall make a complete inspection of at least one (1) unit through all phases of manufacture to assure that the manufacture has the capabilities to produce units in compliance with their approved design and/or the appropriate codes. Thereafter, inspection of every system of every building or component shall be made at least at one (1) point during the manufacturing process.

(2) Individual unit inspections. The quality control procedure set forth in these regulations may be waived by the Department at the manufacturer's request. Waiver of the quality control procedure, however, shall require the manufacturer to have all systems of each unit he it produces individually inspected.

8-612. Reciprocity.

(1) The Council may enter into agreements with other states for reciprocal approval of modular buildings when the Council determines that the requirements of the Act and these regulations are met.

(2) A modular building sold or erected in South Carolina, which has been inspected under a reciprocal agreement with another state, shall bear the certification label of South Carolina, and the certification label of the inspecting state or a common label approved by Council.

(3) The Department reserves the right to determine compliance of all units to be sold or erected in South Carolina which have been inspected under reciprocal agreement with another state.

(4) If the Council determines that standards and inspections of modular buildings prescribed by statutes of another state are equal to those of the Act and these regulations, and that such standards are equally enforced, the Council may enter into reciprocity with that state.

(5) If the reciprocating state suspends or revokes a manufacturer's certification, license or plan approval, the certification license or plan approval of the Council granted under these regulations shall likewise be suspended or revoked.

8-613. Multiple Site Manufacturing.

(1) If a manufacturer plans to produce at more than one (1) location, plan approval may be obtained for all locations at the time of filing subject to submission of the following:

- (a) one (1) set of application forms for plan approval designating all locations of manufacture; and
- (b) two (2) sets of plans and specifications, plus one (1) additional set for each location of manufacturer; and
- (c) filing fees as designated in these regulations; and
- (d) two (2) quality control manuals, plus one (1) additional manual for each location of manufacture.

(2) If a manufacturer wishes to obtain approval for one (1) or more points of manufacture, a manufacturer's license, and at least one (1) manufacturer's representative license must be issued for each location.

8-614. Council Certification Label.

(1) Each modular building, section, or component containing any portion of a closed system shall bear a certification label prior to leaving the manufacturing plant unless otherwise authorized by the Department. Each certification label shall be assigned and affixed to a specific unit in a visible location as approved by the Department and whenever possible on the electrical distribution panel cover.

(2) Certification labels are not transferable and void when not affixed to the building, room or component for which they are assigned. All voided certification labels shall be returned to, or may be confiscated by the Department.

(3) The control of certification labels shall remain with the Department and may be revoked by the Department in the event of violation of the conditions of approval.

8-615. Certification Label Application and Issuance.

A label request application, along with the appropriate fee, shall be submitted by the manufacturer to the Department. The application shall include the manufacturer's model number of each unit for which a certification label is required. Additionally, the manufacturer shall file with the Department a certification label disposition report at least monthly, which indicates the model serial number, certification label number, and final location of each modular unit.

8-616. Certification Label Denial.

Should inspection reveal that a manufacturer is not manufacturing buildings or components in accordance with the approved plans and such manufacturer, after having been served with a notice fully stating the violations, fails to take the appropriate corrective action, then all subsequent applications for certification labels shall be denied and all certification labels previously issued, invalidated. Label issuance shall not resume until all violations have been corrected and proof of compliance submitted to the Department.

8-617. Removal of Certification Labels.

(1) In the event that a modular building or component bearing a certification label is found to be in violation of the approved plans, the approved inspection agency or the Department shall remove the certification label and furnish the manufacturer with a written statement of all violations.

(2) Following correction of all violations, the manufacturer shall request an inspection to be made by the approved inspection agency or Department, before a replacement certification label may be issued.

8-618. Schedule of Fees.

(1) Modular building systems plan review:

- (a) structural systems \$110.00
- (b) electrical systems \$30.00
- (c) plumbing systems \$30.00
- (d) HVAC Systems \$30.00
- Total of all Systems \$200.00

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(2) Component or core unit plan review:

- (a) structural systems \$60.00
- (b) electrical systems \$20.00
- (c) plumbing systems \$20.00
- (d) HVAC Systems \$20.00
- Total of all Systems \$120.00

(3) All fees are payable at the time of submittal of the application and are nonrefundable.

(4) The Department will charge a rate of twenty dollars (\$20.00) per man hour to cover the costs of review and evaluation when the time involved exceeds ten (10) hours.

(5) The annual plan maintenance fee shall be fifty dollars (\$50.00) per manufacturer.

(6) Field technical services shall be charged at the rate established in paragraph four (4) above. Out of state services (field technical service, conference, inspections) shall be the same plus transportation and expenses as outlined by current state travel regulations. Minimum time is one (1) hour.

(7) Label fees:

- (a) any single modular systems \$45.00 each
- (b) any floor, wall or roof/ceiling system \$15.00 each
- (c) all other components \$5.00

(8) The license fee for a manufacturer producing twenty-five (25) units or more shall be seven hundred fifty dollars (\$750.00) per year. The license fee for a manufacturer producing twenty-four (24) units or less shall be two hundred fifty dollars (\$250.00) per year.

(9) The license fee for a manufacturer's representative shall be one hundred dollars (\$100.00) per year.

(10) The reviewing fee for new or expired inspection agency applications shall be one hundred twenty-five dollars (\$125.00). The renewal fee shall be one hundred dollars (\$100.00) per year. The initial application fees and all subsequent renewal fees shall be payable at the time of submittal of the application and valid until the thirtieth (30th) of June following the date of approval. All filing fees are nonrefundable.

(11) Recertification Fee \$200.00.

8-619. Appeal Procedures.

(1) Any person or organization aggrieved by the application of these regulations may initiate an appeal by writing to the Council within thirty (30) days following the date of action upon which the appeal is based. The request shall contain:

- (a) the name and address of appellant; and
- (b) the names and addresses of all other persons involved; and
- (c) a summary of the action from which the appeal is taken; and
- (d) the grounds of disagreement with the action from which the appeal is taken; and
- (e) a statement that the appellant desires a hearing or decision based on written arguments and documents submitted; and
- (f) the signature of the appellant or responsible officer if the appellant is an organization; and
- (g) additional documents as the appellant may consider pertinent.

(2) Call of meeting. Upon receipt of a request, the Department shall call a meeting of the Council to be held within forty-five (45) days of the request. The Department shall provide written notice of the time, date, and place of the hearing to the appellant and all persons indicated in the request.

(3) Evidence. Technical rules of evidence shall not be applicable and all relevant evidence of reasonable value may be received.

(4) Ruling. A ruling of the Council shall require a majority vote of the members present. A record of the meeting, stating the Council's ruling and reasons therefore, shall be maintained for public review.

(5) Notification of ruling. The Department shall notify the appellant of the ruling within ten (10) days of the decision of the Council.

8-620. License Application Requirements.

(1) Every manufacturer that produces modular buildings to be erected in South Carolina, must be licensed in accordance with the Act and these regulations. The application for a modular building manufacturer's license shall include, but not be limited to the following:

- (a) the name of the business; and
 - (b) the address or location of the business; and
 - (c) the state in which the manufacturer is incorporated; and
 - (d) a statement of the business history of each owner, partner, or officer of the manufacturing firm or corporation, for the past seven (7) years.
- (2) Every manufacturer shall employ at least one (1) representative, who will be responsible for the sale of modular buildings or components. All manufacturer's representatives must be licensed in accordance with the Act and these regulations. The application for a modular building manufacturer's representative license shall include, but not be limited to:
- (a) the name of the applicant; and
 - (b) the residence address of the applicant; and
 - (c) the names and addresses of previous employers for the past three (3) years.
- (3) Manufacturer's representatives shall be directly employed by the manufacturer.

8-621. Sale of Modular Buildings.

- (1) Only South Carolina licensed manufacturer's representatives or South Carolina licensed homebuilders or South Carolina licensed general contractors in the building classification within the group limitations of the license are permitted to sell modular buildings or components to consumers on a retail basis, provided that:
- (a) if the modular building is purchased by a residential builder operating as a firm, the firm must meet the requirements of Sections 40-59-400 and 40-59-410, including, when applicable, the requirement to hold a residential business certificate of authorization issued by the Residential Builders Commission; or
 - (b) if the modular building is purchased by a company operating as a licensed general contractor, the company must meet the definition of an entity in Section 40-11-20 (7) and have a designated primary qualifying party, as required under Section 40-11-230. The primary qualifying party shall serve as the principal individual responsible for directing or reviewing work performed by the licensee in a particular license classification or subclassification; and
 - (c) the general contractor or residential builder must sell the modular building directly to the consumer and perform, and take responsibility for, erection of the structure and all its related systems and site work or must contract to have this work performed by a properly licensed general contractor or residential builder. A sales contract is required and must identify the seller and buyer by name.

8-622. License Issued.

- (1) A license shall be issued by the Council when it is determined that the information contained on the application is in compliance with these regulations.
- (2) Any change in the information presented on the original application shall be submitted to the Council within twenty (20) days.

8-623. Security Requirement.

Before any license may be issued, a corporate surety bond designating the applicant as principal or other security approved by the council must be provided. Bonds shall be in the amount of seventy-five thousand dollars (\$75,000.00) for manufacturers and ten thousand dollars (\$10,000.00) for manufacturer's representatives. All bonds shall be to the Council and in favor of any person who suffers loss as a result of any violation of the Act or these regulations. A new bond or proper continuation certificate shall be delivered to the Council at the beginning of each license period. The aggregate liability of the bond or security in any one (1) year shall not exceed its total annual amount. No applicant shall be required to have more than one (1) bond.

8-624. Duties and Responsibilities of Council.

- (1) The Council shall keep minutes and records of all its transactions, proceedings and meetings, and duly certified copies thereof shall be sufficient to comply with the rules of evidence.
- (2) The Council shall investigate on its own initiative or upon written complaint, allegations of wrongful acts involving a manufacturer, or manufacturer's representative.

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8-625. Denial, Revocation or Suspension of License.

The Council shall have the power to deny issuance of or revoke or suspend any license issued for any of the following reasons:

- (a) providing false or inaccurate information on any license application; or
- (b) willfully or intentionally failing to comply with any provision of the Act or these regulations; or
- (c) failing to have an established place of business; or
- (d) employment of fraudulent methods or practices; or
- (e) using unfair methods of competition or deceptive acts or advertising; or
- (f) failing to obtain a license before doing business in South Carolina; or
- (g) failing to appear before the Council upon due notice or follow directives of the Council or Department; or
- (h) failing to comply with adopted codes or standards in the manufacture, sale, or delivery of modular buildings; or
- (i) offering for sale unlicensed manufacturer's products, either wholesale or retail; or
- (j) selling a modular building or component, for the purpose of resale, to an individual or entity other than a general contractor or residential builder.

8-626. Erection.

(1) Modular buildings shall be erected by South Carolina licensed general contractors or residential builders within the limitations of their license classifications in accordance with the manufacturer's recommended erection procedures and the building codes adopted in these regulations. Upon completion of erection, modular buildings shall be considered equal to structures constructed on site in a conventional manner. The general contractor or residential builder must assume the same responsibilities and liabilities for the work which they perform, as if the buildings were constructed on-site. All manufacturers, general contractors and residential builders to the extent of their work, shall be subject to the provisions of Section 15-3-630.

(2) All warranty periods offered by the manufacturers of modular buildings, building systems, building components and appliances will begin at the time the consumer takes possession of the building.

8-627. Exemption.

(1) Factory built structures meeting all of the following criteria will be exempt from these regulations. To be exempt the unit must:

- (a) be designed for continuous over-the-road travel; and
- (b) have a maximum width of eight (8) feet in its transportable mode; and
- (c) have a maximum length of fifty (50) feet; and
- (d) have permanently mounted running lights; and
- (e) have a current license plate; and
- (f) have permanent axle(s) and under carriage system; and
- (g) have stabilizers and permanent front jack stands; and
- (h) have a permanent fifth (5th) wheel connection; and
- (i) have a permanent suspension system; and
- (j) provide an electrical cord for temporary electrical service.

(2) Self-propelled structures, containing an integral cab and licensed as a motor vehicle will be exempt from these regulations.

8-628. Recertifying.

(1) Modular buildings, originally constructed, certified and labeled in accordance with the act and these regulations, may be recertified and relabeled if all of the following conditions are met.

- (a) the original manufacturer must hold a current license issued in accordance with the act and these regulations; and
- (b) the original certification label(s) must be attached to the building and be in good, legible condition; and
- (c) the building must be returned to the original manufacturing facility; and
- (d) the building must be certified by an approved inspection agency, is meeting all requirements of the building codes in affect, and recognized by the department at the time of recertification; and
- (e) the manufacturer must install a new data plate on the building while at the manufacturing facility; and

- (f) the approved inspection agency must install a new certification label on the building while at the manufacturing facility; and
- (g) the manufacturer must pay the fee for recertification and purchase a new certification label; and
- (h) the approved inspection agency must be present and witness the installation of the new certification label issued by the department while at the manufacturing facility.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

The amendments are necessary to provide a higher degree of consumer protection and assure accountability, for the retail sale of modular buildings; and, to move the regulations from the Budget and Control Board, to their appropriate location under the Department of Labor, Licensing and Regulation. The amendments are also needed to remove obsolete language and update the regulations to coincide with current statutory provisions.

Document No. 3193
DEPARTMENT OF LABOR, LICENSING AND REGULATION
PANEL FOR DIETETICS
CHAPTER 40
Statutory Authority: 1976 Code Sections 40-1-70 and 40-20-50

40-1 through 40-16. Licensure and Regulation of Persons Engaging in the Practice of Dietetics

Synopsis:

The Department of Labor, Licensing and Regulation is establishing regulations necessary to carry out and enforce the provisions of The South Carolina Dietetics Licensure Act, Title 40, Chapter 20, of the 1976 Code of Laws of South Carolina, as amended (2006 Act 392) regarding the licensure and regulation of persons engaging in the practice of dietetics within the State of South Carolina.

Instructions:

New Sections. Insert 40-1 through 40-16 as printed below.

Text:

40-1. Definitions.

Definitions found in Section 40-20-5, et seq., apply to this chapter.

(A) "Applicant" means any person who has made application for licensure in this state to engage in the practice of dietetics. Applicants may include those exempt from the licensing requirements pursuant to Section 40-20-110.

(B) "Continuing education" means an organized educational program designed to expand a licensee's knowledge base beyond the basic entry-level educational requirements for the practice of dietetics. Course content must relate to the practice of dietetics whether the subject is research, treatment, documentation, education, or management.

(C) For purposes of continuing education as defined in this chapter, "One Continuing Professional Education (CPE) hour" is sixty (60) minutes of instruction or organized learning for all purposes including continuing competency.

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(D) "Nutritional assessment" means the integrative evaluation of nutritionally relevant data to develop an individualized nutritional care plan. These data may include:

- (1) Nutrient intake;
- (2) Anthropometric measurements;
- (3) Biochemical values;
- (4) Physical and metabolic parameters;
- (5) Socio-economic factors;
- (6) Current medical diagnosis and medications; and
- (7) Pathophysiological processes.

The mere collection of these data for use in assessment is not nutritional assessment and does not require a dietitian licensed under this section.

(E) "Nutritional counseling" means the advising of individuals or groups regarding nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status. The distribution by an individual of written information prepared by a licensee is not nutritional counseling, and any person distributing the written information need not be licensed under this section.

(F) "Nutritional education" means a planned program based on learning objectives with expected outcomes designed to modify nutrition-related behaviors. This does not prohibit an individual from providing general non-medical nutrition information if the person does not violate this section.

(G) "Nutritional care standards" means policies and procedures pertaining to the provision of nutritional care in institutional and community settings.

(H) "Nutritional care" means the application of the science of nutrition in the health and disease of people.

(I) "Commission" means "The Commission on Dietetic Registration" of the American Dietetic Association.

(J) "A.D.A." means the "American Dietetic Association."

(K) "Medical nutrition therapy" means the use of specific nutrition services to treat, or rehabilitate an illness, injury, or condition. Medical nutrition therapy includes nutrition assessment, intervention, education, and counseling.

(L) "Council on postsecondary accreditation" is synonymous with "Commission on recognition of post-secondary accreditation."

(M) For purposes of this section, the terms "Nutritionist", "Nutrition counselor" and like terms tend to indicate the person is practicing dietetics.

(N) "General nutrition information" means information on the following:

- (1) Principles of good nutrition and food preparation;
- (2) Food to be included in the normal daily diet;
- (3) The essential nutrients needed by the body;
- (4) Recommended amounts of the essential nutrients;
- (5) The actions of nutrients on the body;
- (6) The effects of deficiencies or excesses of nutrients; or
- (7) Food and supplements that are good sources of essential nutrients.

40-2. Officers of the Panel; Elections.

At the first meeting of each calendar year, the panel shall elect from among its members a chairman, vice-chairman, and other officers as the panel determines to be necessary. Officers shall serve terms of one year and until their successors have been elected.

40-3. Officer Duties and Panel Policy.

(A) Duties of officers:

(1) The Chair shall preside at all panel meetings at which the chairman attends and perform all duties prescribed by law or Panel regulations.

(2) The Chair may appoint such advisory committees of Panel members and others as may assist the Panel in carrying out its responsibilities.

(3) The Vice-Chair shall perform the duties of the Chair if the Chair is absent or disabled. If the office of Chair becomes vacant, the Vice-Chair will serve until a successor is elected.

(B) The policy of the Panel is that members shall attend regular and special meetings as scheduled, and shall be compensated on a per diem basis when attending meetings or conducting official business for the agency as provided by law for members of state boards, committees, and commissions.

40-4. Meetings.

(1) The panel shall meet at least two (2) times during every calendar year and at other times upon the call of the chairman or a majority of the panel members.

(2) A majority of the members of the panel constitutes a quorum; however, if there is a vacancy on the panel, a majority of the members serving constitutes a quorum.

(3) Panel members are required to attend meetings or to provide proper notice and justification of inability to do so. Unexcused absences from meetings may result in removal from the Panel as provided in Section 1-3-240, South Carolina Code of Laws 1976, as amended. The Panel shall make the final decisions as to an acceptable excuse for absences of panel members.

40-5. Licensing Provisions.

Applicant for initial licensure as a licensed dietitian may apply by Examination, Registration or Endorsement.

40-5.1. Licensure by Examination.

As a prerequisite to the issuance of an initial license, the applicant shall provide evidence of passing the examination for dietitians offered by or as approved by the Panel. An applicant for licensure based on examination shall submit to the Panel:

(1) The completed application on the forms approved by the Panel along with required fees. Electronic submission is acceptable.

(2) A photograph of the applicant. Only a passport type (2" x 2") photo taken within the past twelve (12) months will be accepted.

(3) Proof of examination eligibility by the Commission on Dietetic Registration.

(4) The Panel may request additional verification of any requirements or credentials as it may deem necessary.

(5) An academic transcript from all degree granting institutions of higher education directly to the panel administrator.

40-5.2. Licensure by Registration.

An applicant for licensure based on registration by the Commission on Dietetic Registration shall submit to the Panel:

(1) The completed application on the forms approved by the Panel along with required fees. Electronic submission is acceptable.

(2) A photograph of the applicant. Only a passport type (2" x 2") photo taken within the past twelve (12) months will be accepted.

(3) A copy of the valid current registration card from the Commission on Dietetic Registration.

(4) The Panel may request additional verification of any requirements or credentials as it may deem necessary.

(5) An official copy of academic transcript from all degree granting institutions of higher education directly to the panel administrator.

40-5.3. Licensure by Endorsement.

An applicant for licensure by endorsement must hold a current, active, and unrestricted license under the laws of another state or territory that had requirements that were, at the date of licensure, equivalent to the requirements in effect at the time of the application in South Carolina; and must submit:

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- (1) The completed application on a form approved by the panel, along with the required fees. Electronic submission is acceptable.
- (2) A photograph of the applicant. Only a passport type (2" x 2") photo taken within the past twelve (12) months will be accepted.
- (3) A copy of the valid current registration card from Commission on Dietetic Registration.
- (4) The Panel may request additional verification of any requirements or credentials as it may deem necessary.
- (5) An official copy of academic transcript from all degree granting institutions of higher education directly to the panel administrator.
- (6) If an applicant seeks licensure on the basis that the applicant has met equivalent requirements in another state or foreign country, the applicant shall attach to the application proof that the requirements of the other state or foreign country are equivalent to those of this state, unless the panel has taken action recognizing that the requirements of the other state or foreign country to be waived are equivalent to similar requirements in this state.

40-5.4. Foreign Educated Applicants.

For the purpose of proving accreditation of a course of study at a foreign institution, an applicant shall have the applicant's academic credentials independently validated as equivalent by an accreditation agency that is recognized by "the commission on recognition of post-secondary accreditation," or its predecessor, or have the applicant's academic credentials independently validated by an agency specializing in education evaluations which is acceptable to the panel. A copy of the validation shall be attached to the application as part of the application.

40-5.5. A licensee shall notify the panel of a change of address providing at least a new address, telephone number, and signed request for the change. A licensee shall notify the panel of a change of name by providing legal evidence of the name change and a signed request for the change.

40-5.6. All applications, statements and documents submitted shall become the property of the panel.

40-6. Requirements for Renewal.

All renewals shall be filed with the panel prior to May 31 of the renewal year.

- (1) Renewal applications must be accompanied by the appropriate fee and a statement attesting to the required number of continuing professional education credits (CPE) per biennium.
- (2) Renewals received after May 31 will be late. A licensee may renew their license by submitting the renewal applications along with the appropriate renewal fee and late fee by June 30 of the renewal year.
- (3) If a licensee fails to timely renew his/her license, the license is deemed lapsed or expired and the licensee may not practice as a dietitian in this State until the license is reinstated to practice.

40-7. Reinstatement / Reactivation of Expired, Lapsed Licenses.

(A) An expired license shall lapse after the June 30 of the renewal year and is subject to reinstatement at the discretion of the panel:

(1) An individual seeking to reinstate a lapsed license shall complete the application for reinstatement, provide evidence of compliance with cumulative continuing education requirements and pay the current renewal fee, late fee, and payment of a reinstatement fee.

(2) A lapsed license may not be renewed or placed in inactive status.

(B) An individual seeking to reinstate a license which has lapsed for more than four years must reapply for licensure and must meet the current licensure requirements including:

(1) passing the examination;

(2) provide proof of current registration by the Commission on Dietetic Registration;

(3) completion of the application, and payment of the appropriate fees.

(C) The panel may deny reinstatement based on evidence of misconduct.

40-8. Continuing Competency; Continuing Education Credits.

(A) Persons licensed to practice dietetics are required to demonstrate continuing professional competency. Licensee shall submit a continuing education report on a form approved by the panel as a condition of renewal.

(B) Each applicant for a renewal of a license shall demonstrate compliance with the continuing education requirements of this rule by completing thirty (30) hours of continuing professional education per renewal period.

(C) Licensees who are registered dietitians shall have a two-year continuing education cycle established by the panel, shall be notified of the cycle, and shall adhere to that schedule for meeting requirements consistent with the options offered by the Commission.

(D) Evidence of continuing professional education units shall include a certificate of attendance signed by program provider or designee; the number of continuing professional education units requested; titles of presentations; speakers' or instructors' qualifications; timing outlines; application of learning; and other documentation as the panel may require.

40-9. Fees.

Fees must be assessed, collected, and adjusted on behalf of the panel by the Department.

40-10. Misconduct Defined.

Misconduct means any one or more of the following:

- (1) violation of any of the provisions of Section 40-20-30, Section 40-20-100, or Section 40-20-130 (A), or Section 40-1-110 Code of Laws of South Carolina, 1976, as amended; and
- (2) violation of any of the principles of dietetic ethics as adopted by the Panel.

40-11. Code of Ethics.

Licensed professionals in the field of dietetics, must maintain high standards of integrity and professional conduct, accept responsibility for their actions, continually seek to enhance their professional capabilities, practice with fairness and honesty, and encourage others to act in a professional manner consistent with the licensure standards and responsibilities set forth in these Rules, The American Dietetic Association (ADA), and as may be adopted from time to time:

- (1) The licensed dietitian conducts himself/herself with honesty, integrity, and fairness.
- (2) The licensed dietitian practices dietetics based on scientific principles and current information.
- (3) The licensed dietitian presents substantiated information and interprets controversial information without personal bias, recognizing that legitimate differences of opinion exist.
- (4) The licensed dietitian assumes responsibility and accountability for personal competence in practice, continually striving to increase professional knowledge and skills and to apply them in practice.
- (5) The licensed dietitian recognizes and exercises professional judgment within the limits of his/her qualifications and collaborates with others, seeks counsel, or makes referrals as appropriate.
- (6) The licensed dietitian provides sufficient information to enable clients and others to make their own informed decisions.
- (7) The licensed dietitian protects confidential information and makes full disclosure about any limitations on his/her ability to guarantee full confidentiality.
- (8) The licensed dietitian provides professional services with objectivity and with respect for the unique needs and values of individuals.
- (9) The licensed dietitian provides professional services in a manner that is sensitive to cultural differences and does not discriminate against others on the basis of race, ethnicity, creed, religion, disability, sex, age, sexual orientation, or national origin.
- (10) The licensed dietitian does not engage in sexual harassment in connection with professional practice.
- (11) The licensed dietitian provides objective evaluations of performance for employees and coworkers, candidates for employment, students, professional association memberships, awards, or scholarships.

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(12) The licensed dietitian makes all reasonable effort to avoid bias in any kind of professional evaluation of others.

(13) The licensed dietitian is alert to situations that might cause a conflict of interest or have the appearance of a conflict.

(14) The licensed dietitian provides full disclosure when a real or potential conflict of interest arises.

(15) The licensed dietitian who wishes to inform the public and colleagues of his/her services does so by using factual information. The licensed dietitian does not advertise in a false or misleading manner.

(16) The licensed dietitian promotes or endorses products in a manner that is neither false nor misleading. The licensed dietitian permits the use of his/her name for the purpose of certifying that dietetics services have been rendered only if he/she has provided or supervised the provision of those services.

(17) The licensed dietitian withdraws from professional practice under the following circumstances:

(a) The licensed dietitian has engaged in any substance abuse that could affect his/her practice;

(b) The licensed dietitian has been adjudged by a court to be mentally incompetent;

(c) The licensed dietitian has an emotional or mental disability that affects his/her practice in a manner that could harm the client or others.

(18) The licensed dietitian complies with all applicable laws and regulations concerning the profession and is subject to disciplinary action under the following circumstances:

(a) The licensed dietitian has been convicted of a crime under the laws of the United States which is a felony or a misdemeanor, an essential element of which is dishonesty, and which is related to the practice of the profession.

(b) The licensed dietitian has been disciplined by a state, and at least one of the grounds for the discipline is the same or substantially equivalent to these principles.

(c) The licensed dietitian has committed an act of misfeasance or malfeasance which is directly related to the practice of the profession as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.

(19) The licensed dietitian shall report to the appropriate authorities any incident of which he/she has personal knowledge, of unethical dietetic practice by any individual or organization.

40-12. Complaints.

(A) Complaints shall be filed and processed in accordance with Chapter 1 of Title 40 and the Administrative Procedures Act, South Carolina Code of Laws 1976, as amended.

(B) Anyone may complain to the panel alleging that a person has committed an action prohibited by this section.

40-13. Appeals.

A person aggrieved by a final action of the panel denying or revoking his/her license may appeal in accordance with Section 40-1-160 and the Administrative Procedures Act, South Carolina Code of Laws 1976, as amended.

40-14. Weight Program Exemption.

A "general program of weight control" is a program designed for one or more population groups in order to achieve or maintain a healthy weight. It is not based on an individual nutrition assessment and does not provide medical nutrition therapy (MNT) as defined in this section. The program includes the diet plan and any information provided to customers including written guidelines for instruction to customers.

40-15. Interpretation of Standards.

The standards in this chapter and regulations are interpreted in a manner consistent with The Standards of Professional Responsibility and the Standards of Practice adopted by the American Dietetic Association Commission of Dietetic Registration.

40-16. Licensure Timeframes.

Registered Dietitians who are currently engaged in the practice of Dietetics as defined by this chapter shall attain a license or cease and desist from practice as a dietitian no later than July 1, 2008.

Fiscal Impact Statement:

There will be no increased costs to the State or its political subdivisions.

Statement of Rationale:

These regulations will carry out and enforce the provisions of The South Carolina Dietetics Licensure Act (2006 Act 392) and assist in the licensure and regulation of dietitians and nutritionists in this State.

Document No. 3159
DEPARTMENT OF REVENUE
 CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

117-307.3. Accommodation

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307.3 concerning the application of the sales and use tax to the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration and the exception for facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. This regulation specifically concerns the exception and provides examples to illustrate when the exception does and does not apply.

It has been the longstanding position of the Department that in order for the exception to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode."

The purpose of this regulation is to incorporate this longstanding position in this regulation and to provide examples to assist taxpayers in understanding this exception for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility.

Instructions:

Amend SC Regulation 117-307.3 concerning the application of the sales and use tax to the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration and the exception for facilities that consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities.

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Text:

117-307.3. Certain Facilities Not Subject to the Tax.

(A) The tax applies to the gross proceeds from the rental or charges for any rooms, lodgings or accommodations furnished to transients by any hotel, inn, tourists court, motel, residence, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration, except where such facilities consist of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of such facilities. For this exception to apply, the facility must serve as the owner's or operator's "place of abode" during the same times at which the remaining sleeping rooms are rented to transients and the rooms must not be rented to transients by a person other than the owner or operator using the facility as his or her "place of abode." See subsection C below.

Examples illustrate some of the situations as to when the exception applies or does not apply to an individual renting sleeping accommodation at a home with less than six sleeping rooms to a transient for less than 90 continuous days (See subsection B below).

(1) W owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. W rents these rooms to vacationers himself and does not employ the services of a real estate agent or broker.

The rentals by W of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to W by the vacationers are not subject to the sales tax on accommodations under Code Section 12-36-920.

(2) X owns a home with less than six sleeping rooms and uses the home only for one or two weeks a year for family vacations. She rents the home to vacationers during the rest of the year on a weekly basis. She rents it herself and does not employ the services of a real estate agent or broker.

The rentals by X of the home to vacationers do not qualify for the exception in the statute; therefore, the rental charges paid to X by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920.

(3) Y owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. However, Y never rents these rooms to vacationers himself. He employs the services of a real estate agent who rents the remaining sleeping rooms for him.

The rentals by the real estate agent of these rooms to vacationers for Y do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920 with the real estate agent liable for the tax.

(4) Z owns a home with less than six sleeping rooms and lives in the home throughout the year. He operates this home as a "bed and breakfast" by renting the remaining sleeping rooms to vacationers on a daily or weekly basis. He employs the services of a real estate agent who rents the remaining sleeping rooms for him. However, sometimes Z rents these remaining rooms to vacationers himself.

The rentals by the real estate agent of these rooms to vacationers for Z do not qualify for the exception in the statute; therefore, the rental charges paid to the real estate agent by the vacationers are subject to the sales tax on accommodations under Code Section 12-36-920 with the real estate agent liable for the tax.

The occasional rentals by Z of these rooms to vacationers qualify for the exception in the statute; therefore, the rental charges paid to Z by the vacationers are not subject to the sales tax on accommodations under Code Section 12-36-920.

(B) The gross proceeds derived from the lease or rental of accommodations supplied to the same person for a period of 90 continuous days shall not be considered proceeds from transient.

(C) Real estate agents, brokers, corporations or listing services leasing or renting accommodations, whether owned by them or others, to persons for periods of less than 90 continuous days are retailers liable for the sales tax on accommodations.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The purpose of this regulation is to incorporate this longstanding position in this regulation and to provide examples to assist taxpayers in understanding this exception for a facility that consists of less than six sleeping rooms, contained on the same premises, which is used as the place of abode of the owner or operator of the facility.

Document No. 3164
DEPARTMENT OF REVENUE
 CHAPTER 117
 Statutory Authority: 1976 Code Section 12-4-320

117-329. Communications Services

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The purpose of this regulation is to summarize longstanding Department opinion concerning the taxability of various communications services and to attempt to list as many communications services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers. For example, the Department has taxed communications services such as telephone services, paging services, answering services, cable television services, satellite programming services (includes, but is not limited to, emergency communication services and television, radio, music or other programming services), fax transmission services, voice mail messaging services, e-mail services, and database access transmission services (on-line information services), such as legal research services, credit reporting/research services, and charges to access an individual website. Communication technology is expanding every day. As such, new and emerging technologies will make available to consumers many new communications services in the future. The Department will continue to review such communications services on a case-by-case basis. For a detailed discussion of the statute, see Department advisory opinion SC Revenue Ruling #06-8.

Instructions:

Amend SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The purpose of this regulation is to summarize longstanding Department opinion concerning the taxability of various communications services and to attempt to list as many communications services as

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possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers.

Text:

117-329 Communications Services

The purpose of this regulation is to provide guidance as to the application of the sales and use tax to the wide variety of communications services available to individual consumers and to businesses. It also lists examples of communication services that are or are not subject to the tax. Charges for other communications services not listed in this regulation are still subject to the tax if they constitute charges for the ways or means for the transmission of the voice or messages and are not otherwise exempted under the law.

117-329.1 Ways or Means for Transmission of Voice or Messages

Communications are subject to sales and use taxes pursuant to Code Sections 12-36-910(B)(3) and 12-36-1310(B)(3), which impose the tax on the “gross proceeds accruing or proceeding from the charges for the ways or means for the transmission of the voice or messages, including the charges for use of equipment furnished by the seller or supplier of the ways or means for the transmission of the voice or messages.”

“Charges for the ways or means for the transmission of the voice or messages” is defined to include, but is not limited to, charges for access to, or use of, a communication system (the manner, method or instruments for sending or receiving a signal of the voice or of messages), whether this charge is based on a fee per a specific time period or per transmission or any other method.

117-329.2 Prepaid Wireless Calling Arrangements

Code Section 12-36-910(B)(5) and Code Section 12-36-1310(B)(5) impose the sales and use tax on the “gross proceeds accruing or proceeding from the sale or recharge at retail for prepaid wireless calling arrangements.”

“Prepaid wireless calling arrangements” means communication services that (i) are used exclusively to purchase wireless telecommunications; (ii) are purchased in advance; (iii) allow the purchaser to originate telephone calls by using an access number, authorization code, or other means entered manually or electronically; and (iv) are sold in units or dollars which decline with use in a known amount.

117-329.3 900/976 Telephone Services

Communications are subject to sales and use taxes pursuant to Code Section 12-36-2645, which imposes the sales and use tax on the “gross proceeds accruing or proceeding from the business of providing 900/976 telephone service.” However, this code section imposes the sales and use tax on such communications services at a higher state rate than the general state sales and use tax rate.

117-329.4 Examples of Taxable Communications Services

The following are examples of communication services that are subject to the sales and use tax (unless otherwise listed as non-taxable in 117-329.5 or otherwise exempt or excluded under the law):

(a) Telephone services, including telephone services provided via the traditional circuit-committed protocols of the public switched telephone network (“PSTN”), a wireless transmission system, a voice over Internet protocol (“VoIP”), or any of other method

(b) Teleconferencing Services

- (c) Paging Services
- (d) Answering Services
- (e) Cable Television Services
- (f) Satellite Programming Services and Other Programming Transmission Services, including, but is not limited to, emergency communication services and television, radio, music or other programming services
- (g) Fax Transmission Services
- (h) Voice Mail Messaging Services
- (i) E-Mail Services
- (j) Electronic Filing of Tax Returns when the return is electronically filed by a person who did not prepare the tax return
- (k) Database Access Transmission Services or On-Line Information Services, including, but not limited to, legal research services, credit reporting/research services, and charges to access an individual website (including Application Service Providers)
- (l) Prepaid Wireless Calling Arrangements (sale or recharge at retail) as defined in Code Section 12-36-910(B)(5)
- (m) 900/976 Telephone Service

117-329.5 Examples of Non-Taxable Communications Services

The following are examples of communication services are not subject to the sales and use tax:

- (a) Telephone services specifically exempted under Code Section 12-36-2120(11), such as toll charges between telephone exchanges and carrier access charges and customers access line charges established by the Federal Communications Commission or the South Carolina Public Service Commission
- (b) Telegraph Messages exempt under Code Section 12-36-2120(11)
- (c) Communication Services involving Automatic Teller Machines exempt under Code Section 12-36-2120(11)
- (d) Data Processing Services as defined under Code Section 12-36-910(C)
- (e) Computer Database Information Services provided by a cooperative service when the database information has been assembled by and for the exclusive use of the members of the cooperative services excluded from the tax under Code Section 12-36-60
- (f) Electronic Filing of Tax Returns when the return is electronically filed by a person who prepared the tax return
- (g) Other charges specifically exempt from the tax under State law or federal law

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Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The purpose of this regulation is to amend SC Regulation 117-329 concerning the application of the sales and use tax to communications services. The regulation summarizes longstanding Department opinion concerning the taxability of various communication services and attempts to list as many communications services as possible that the Department has held in the past as subject to the tax, whether through formal advisory opinions, audits or informal advice provided to taxpayers.

Document No. 3158
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-304.1. Sales Tax

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality.

This regulation presently does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. In other words, the sale of tangible personal property by a State agency to another agency is not subject to the sales tax if the transferring agency is only reimbursed its costs and expenses in conveying the property and it paid the tax on its initial purchase of the property.

Code Section 12-36-910(B)(4) imposes the sales tax on the "fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer." For example, if a manufacturer of an industrial cleaning solution uses the cleaning solution instead of selling it, the manufacturer is liable for the sales tax on the fair market value of the cleaning solution it manufactured and used.

The proposed amendment to SC Regulation 117-304.1 is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

Instructions:

Amend SC Regulation 117-304.1 concerning the application of the sales and use tax to transfers of tangible personal property from a State agency to another State agency, a county or a municipality.

Text:

117-304.1 Transfers Between Agencies and Between the State and its Political Subdivisions.

An agency of the State of South Carolina is not deemed to be selling tangible personal property at retail when transferring tangible personal property to another agency of the State or to a county or to a municipality if the consideration for the transfer only reimburses the transferring agency for its cost and expenses in conveying the property; provided transferring agency has paid tax on the initial purchase of the tangible personal property. In addition, the provisions of Code Section 12-36-910(B)(4) do not apply to a State agency that manufactures tangible personal property within the State and uses or consumes the property in the State if the State agency paid tax on the cost of the tangible personal property incorporated into the item the agency manufactured for its own use or consumption.

Where, however, a State agency sells tangible personal property to persons other than another State agency, county, or municipality for use or consumption, such sales shall be considered retail sales subject to the tax. The agency making the sale is required to be licensed as a retailer under the terms and provisions of the sales and use tax law.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation.

Statement of Rationale:

The purpose of amending SC Regulation 117-304.1 is to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

This regulation presently does not deem such transfers to be sales at retail provided the transferring agency is only reimbursed its costs and paid the tax on its initial purchase of the tangible personal property. Code Section 12-36-910(B)(4) imposes the sales tax on the "fair market value of tangible personal property manufactured within this State, and used or consumed within this State by the manufacturer." The proposed amendment to SC Regulation 117-304.1 is a technical correction concerning Code Section 12-36-910(B)(4) to ensure that a State agency that manufactures tangible personal property receives the same treatment for property it manufactures and uses that it would if it manufactured the property and transferred it to another agency, county or municipality at cost.

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Document No. 3163
DEPARTMENT OF REVENUE
CHAPTER 117
Statutory Authority: 1976 Code Section 12-4-320

117-307. Sales Tax
117-307.1. Sales Tax

Synopsis:

The South Carolina Department of Revenue is considering amending SC Regulation 117-307 and SC Regulation 117-307.1 concerning the sales tax on accommodations and "additional guest charges". During the 2006 session of the General Assembly, Code Section 12-36-1110 was added to increase the general sales and use tax rate from 5% to 6% beginning June 1, 2007. This rate increase does not apply to the 7% sales tax imposed on sleeping accommodations under Code Section 12-36-920(A). However, the sales tax imposed on additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B), and all other sales of tangible personal property at a place providing sleeping accommodations, increased from 5% to 6% beginning June 1, 2007.

The purpose of this regulation proposal is to amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. The amendment would be effective June 1, 2007 – the effective date of the 6% tax rate.

Instructions:

Amend SC Regulation 117-307 and SC Regulation 117-307.1 concerning the sales tax on accommodations and "additional guest charges".

Text:

117-307 Hotels, Motels, and Similar Facilities.

Code Section 12-36-920 imposes a sales tax upon accommodations and "additional guest charges." The term "additional guest charge" means an amount which is added to the guest's room charge for a specific amenity or service for the guest.

Therefore, charges for rooms, lodgings and accommodations are taxed at 7%, while other charges for other services provided at the hotel, when over and above the services customarily provided with the room, are taxed at 6% as an "additional guest charge." However, if an "additional guest charge" would be taxed under other provisions of the sales and use tax law (Chapter 36 of Title 12), then such charges are not taxed as an "additional guest charge."

It should therefore be noted that the determination as to what services, if any, are over and above the services customarily provided with the room must be based on all of the facts and circumstances.

The burden of proof that a charge is an additional guest charge, and not part of the price for the room, rests with the taxpayer. Failure to prove that a particular charge is for a service that is over and above the services customarily provided with the room will subject the charge to the 7% tax rate.

117-307.1 Examples of the Application of Tax to Various Charges Imposed by Hotels, Motels, and Other Facilities.

The following questions and answers are intended to provide guidance with respect to the provisions of Code Section 12-36-920.

Telephone Charges

1.Q. If a hotel charges \$100.00 for a room, and that price includes the room and use of the phone for local calls, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The use of the phone is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

2.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$5.00 per day for the availability of the phone for local calls, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$5.00 telephone charge are taxed at 7%. The availability of a phone is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest uses the phone. Therefore, it is not an additional guest charge when the charge is based on a per day rate.

3.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$1.00 per local phone call, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. Each \$1.00 phone charge is taxed at 6%. The availability of a phone is a part of the services offered and provided with a room; however, the use of the phone for a local call is over and above the services customarily provided with the room. Guests expect to pay a charge for each local call made from the room phone. Therefore, the \$1.00 is an additional guest charge when the charge is based on a per call basis.

4.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$20.00 for various long distance calls made, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the remaining charges for the long distance calls are taxed at 6% as additional guest charges. The Department, in Decision #92-11 held that the charges for long distance telephone calls were not otherwise taxed under Chapter 36 and were therefore taxable as additional guest charges.

Maid Service

5.Q. If a hotel charges \$100.00 for a room, and that price includes maid service, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. Since the maid service is a service provided with the room, it is not an additional guest charge.

6.Q. If a hotel charges \$80.00 for a room, and the customer also must pay a mandatory \$20.00 charge for maid service, which may or may not be separately stated, what tax rate applies to each of the charges?

A. The \$80.00 room charge and the \$20.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the room. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. In this case the maid service is mandatory, and therefore, the actual charge for the room is \$100.00 which is taxed at 7%.

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7.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer also must pay a mandatory \$50.00 charge for maid service at the end of the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The fact that it may be separately charged does not necessarily make the charge an additional guest charge. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%.

8.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer is required to leave the unit in a clean condition, what tax rate applies to each of the charges if the customer has the option to have the rental agency clean the unit at the end of the week for \$50.00?

A. The \$800.00 weekly unit charge is taxed at 7% and the \$50.00 maid service charge is taxed at 6%. The \$50.00 optional maid service is provided over and above the services provided with the unit. The \$50.00 is therefore an additional guest charge subject to the tax at 6%.

9.Q. If a rental agency charges \$800.00 per week for a condominium unit, a mandatory \$50.00 charge for maid service at the end of the week, and the customer has the option to receive daily maid service for \$20.00 a day, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge and the \$50.00 maid service charge are taxed at 7%. The maid service is part of the services provided with the unit. The maid service is mandatory, and therefore, the actual charge for the unit is \$850.00, which is taxed at 7%. The \$20.00 optional maid service is provided over and above the services provided with the unit. The \$20.00 is therefore an additional guest charge subject to the tax at 6%.

In-room Movies

10.Q. If a hotel charges \$100.00 for a room, and that price includes the in-room movies at no extra charge, what tax rate applies to the \$100.00?

A. The \$100.00 charge would be subject to a tax rate of 7%. The availability of in-room movies is a part of the services offered and provided with the room for the \$100.00. Therefore, it is not an additional guest charge.

11.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged a mandatory fee of \$5.00 per day for in-room movies (whether or not the guest watches any movies), what tax rate applies to each of the charges?

A. The \$80.00 room charge and the mandatory \$5.00 in-room movie charge are taxed at 7%. The availability of in-room movies is a part of the services offered and provided with a room. The \$5.00 is charged whether or not the guest watches the movies. Therefore, it is not an additional guest charge when the charge is based on a per day rate and the guest is charged whether or not the movies are watched.

12.Q. If a hotel charges \$80.00 per day for a room, and the customer is also charged \$7.00 for each in-room movie he watched, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%. The \$7.00 movie charge is taxed at 6%. The availability of in-room movies is a part of the services offered and provided with a room; however, the charge for viewing a movie is over and above the customary charge for the room. Guests expect to pay a charge for each movie viewed. Therefore, the \$7.00 is an additional guest charge when the charge is based on a separate charge for watching the movie. The tax on this additional guest charge is the liability of the hotel, regardless of whether or not service is being provided by a third party or the hotel itself.

Meals

13.Q. If a hotel charges \$100.00 for a room, and that price includes a continental breakfast for the guest, what tax rate applies to the \$100.00?

A. The \$100.00 charge is taxed at 7%. Since the continental breakfast is provided with the room, it is not an additional guest charge. (The withdrawal of the food from the hotel's inventory is subject to the sales tax based on its fair market value. See Code Section 12-36-90 and Code Section 12-36-110.)

14.Q. If a hotel charges \$100.00 for a room, and also charges the guest a separately stated \$20.00 "club" fee, what tax rate applies to each of the charges? (The "club" fee, for that extra \$20.00, provides the guest access to a buffet meal that is not available to other guests.)

A. The Department, in Decision #92-32, held that the separately stated charge of \$20.00 was not part of the charge for the room but a retail sale of the meal to the guest. Therefore, the charges are taxed as follows: 7% tax applies to the \$100.00 charge for the room and 6% tax applies to the \$20.00 charge for the meal. The meal is not taxed as an additional guest charge under Code Section 12-36-920(B) since it is otherwise taxed at 6% under Chapter 36--Code Section 12-36-910 and Code Section 12-36-1110.

Linens

15.Q. If a rental agency charges \$800.00 per week for a condominium unit, and the customer has the option to rent linens for \$50.00 for the week, what tax rate applies to each of the charges?

A. The \$800.00 weekly unit charge is taxed at 7%. The rental of the linens is optional and not part of the services provided with the unit for the \$800.00 charge. The \$50.00 rental of the linens is not an additional guest charge since the rental charge for the linens is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36--Code Section 12-36-910 and Code Section 12-36-1110.

Golf and Other Tourist Packages

16.Q. If a hotel has a "golf package" for \$100.00 per night, and the customer is entitled to a room at the hotel, one round of golf at a golf course at no extra charge, and a meal at no extra charge, what tax rate applies?

A. The \$100 charge would be subject to the 7% tax, except any portion forwarded to the golf course for payment of the green fee and any portion forwarded to the restaurant for payment of the meal. However, see the one exception in the "Note" in Example #1.

The following examples best explain this answer:

Example #1: The hotel receives \$100 from the guest for the golf package. The hotel pays the golf course \$30 for the guest's green fee and pays the restaurant \$5 for the guest's meal.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 6% admissions tax on \$30 and the restaurant would be liable for 6% sales tax on the sale of the meal. This calculation must be made on a guest by guest basis. In other words, the 7% tax due will be determined for each guest by multiplying 7% by the total charge for the package less the portion forwarded to the golf course for payment of the green fee and the portion forwarded to the restaurant for payment of the meal.

Note: If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest will not be required to pay the "green fee portion" of the package, the hotel would be liable for the 7% tax on the amount it received from the guest less the amount paid by the hotel to the restaurant. For example, if the hotel determined that the "green fee portion" of the \$100 package was \$30 and

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required the guest to only pay \$70 for that day, then the hotel would be liable for the 7% tax on \$65 and the restaurant would be liable the 6% sales tax on the sale of meal.

If the hotel's guest is unable to play golf that day ("No-Show") (but still received the meal), and under terms of the golf package the guest must still pay the hotel the full \$100, the hotel would be liable for the 7% tax on the "accommodations portion" of the package. The golf course would not be liable for the 6% admissions tax since the guest did not play golf and the golf course did not receive an admissions fee from the hotel. However, the hotel is liable for the 6% tax on the other portion of the \$100 paid by the guest since it now represents an additional guest charge for the service of making the golf arrangements that were not used. This additional guest charge will be equal to the green fee that the hotel would have had to pay to the golf course. In other words, if the hotel would have been required to pay \$30 had the guest played golf, then the additional guest charge would be \$30. As such, the hotel would be liable for the 7% tax on \$65 and the 6% tax (as an additional guest charge for the service) on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal.

Example #2: The hotel receives \$100 from the guest for the golf package. The hotel pays the restaurant \$5 for the guest's meal. The hotel has an agreement with the golf course to pay the golf course \$30 for the guest's green fee. When a guest does play golf, the hotel pays the \$30; however, the hotel will receive money back from the golf course at a later date to help pay for the hotel's advertisements of its golf packages.

The hotel would be liable for the 7% tax on \$65 (\$100 - \$35). The golf course would be liable for the 6% admissions tax on \$30 and the restaurant would be liable for the 6% sales tax on the sale of the meal. The fact that the hotel will receive a portion of the money back in the future does not affect the taxation of the charges. It is merely an expense of the golf course that is paid to the hotel.

Notes: 1. To ensure the 7% tax is not circumvented by sending most of the package charge to the golf course and then later having a large portion of it returned to the hotel as "advertising," the amount paid to the golf course and returned to the hotel to pay for advertising must be reasonable and supported by the books and records of both taxpayers. Otherwise, the Department will assess taxes according to a reasonable breakdown of room charges, green fees, and meal charges.

2. Other tourist packages, such as tennis, honeymoon, and entertainment packages, handled in a similar manner would be taxed in the manner described above for golf packages.

Bike Rentals

17.Q. If a hotel charges \$100.00 per night for a room, and the customer has the option to rent a bike to travel around the resort area for \$10.00 a day, what tax rate applies to each of the charges?

A. The \$100.00 hotel charge is taxed at 7%. The rental of the bike is optional and not part of the services provided with the room for the \$100.00 charge. The \$10.00 is not an additional guest charge since the rental charge for the bike is a sale of tangible personal property and is otherwise taxed at 6% under Chapter 36.

18.Q. If a hotel charges \$100.00 per night for a room, and the hotel allows the guest to reserve a bike at no extra charge to travel around the resort, what tax rate applies to the charge?

A. The \$100.00 hotel charge is taxed at 7%. The availability of the bike is a part of the services provided with the room for the \$100.00 charge and is therefore not an additional guest charge.

Newspapers

19.Q. If a hotel charges \$80.00 for a room, and the guest receives a newspaper that is delivered to the guest's door in the morning, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%. The newspaper is not an additional guest charge since the newspaper is part of the services provided with the room for the \$80.00 charge.

20.Q. If a hotel charges \$80.00 for a room, and the customer is charged \$2.00 for a newspaper that is delivered at the guest's request, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charge for the newspaper, as an additional guest charge, is taxed at 6%. The newspaper that is provided for \$2.00 is over and above the services customarily provided with the room at the hotel.

Valet Parking

21.Q. If a hotel charges \$80.00 for a room, and there is no additional charge to the customer for valet parking, what tax rate applies to the charge?

A. The \$80.00 room charge is taxed at 7%.

22.Q. If a hotel charges \$80.00 for a room, and the customer is also charged \$15.00 for valet parking, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the \$15.00 charge for the valet parking, as an additional guest charge, is taxed at 6%.

23.Q. If a person is not a guest at a hotel, but is attending an event at the hotel, is a \$15.00 charge for valet parking subject to the tax as an additional guest charge?

A. The \$15.00 charge for valet parking is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Meeting Rooms

24.Q. If a hotel charges \$80.00 for a guest room, and there is no additional charge to the customer for the use of a meeting room, what tax rate applies to the charge?

A. The \$80.00 guest room charge is taxed at 7%.

25.Q. If a hotel charges \$80.00 for a guest room, and the customer is also charged \$35.00 for the use of a meeting room, what tax rate applies to each of the charges?

A. The \$80.00 guest room charge is taxed at 7%, while the \$35.00 charge for the meeting room, as an additional guest charge, is taxed at 6%.

26.Q. Is a \$35.00 charge for the use of the meeting room by a person who is not a guest at the hotel, subject to the tax as an additional guest charge?

A. The \$35.00 charge for the meeting room is not subject to the sales tax. It is not an additional guest charge since, in order to be taxable, the charge must be in addition to a room rental charge. This charge is not in addition to another charge.

Note: If the meeting room is being rented by an organization that is conducting a seminar, workshop, conference, or similar meeting at the hotel, the charge for the meeting room is taxed at 6% as an additional

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guest charge if the organization is also renting guest rooms at the hotel for officers or members of the organization, invited speakers, or others.

Other Services

27.Q. If a hotel charges \$100.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at no extra cost, what tax rate applies to the \$100.00?

A. The \$100.00 room charge is taxed at 7%.

28.Q. If a hotel charges \$80.00 for a room, and the room contains a refreshment bar so the guest may avail himself of alcoholic drinks, non-alcoholic drinks, or snacks at a set price per item, what tax rate applies to each of the charges?

A. The \$80.00 room charge is taxed at 7%, while the charges for each item the guest consumes from the refreshment bar is taxed at a rate of 6% as a sale of tangible personal property under Code Section 12-36-910 and Code Section 12-36-1110. These charges are not additional guest charges since they are "otherwise taxed" under Chapter 36.

Cancellations

29.Q. If a person reserves and pays for sleeping accommodations at a hotel, but does not cancel the reservation or does not cancel the reservation by the prescribed time set by the hotel, is the charge for the accommodations retained by the hotel subject to the tax even though he will not use the sleeping accommodations?

A. While the sleeping accommodations were not used, the person had the right to use such sleeping accommodations. Therefore, the sleeping accommodations were "furnished" and the charge by the hotel for such sleeping accommodations is subject to the tax. See Question #30 for information concerning when accommodations are canceled but an administrative fee or deposit is charged or retained.

30.Q. If a person makes reservations with a hotel for sleeping accommodations, but the reservations are canceled by such person or by the hotel, is an administrative fee or deposit charged or retained by the hotel as a result of the cancellation subject to the tax?

A. An administrative fee or deposit retained or charged by a hotel when reservations for sleeping accommodations are canceled is not subject to the sales tax.

Note: See Question #29 for information concerning when accommodations are canceled or otherwise not used but a charge for the sleeping accommodations is made or retained by the hotel. See also Question #16, Example #1 Note, for the taxation of a tourist package when sleeping accommodations are furnished but the guest does not use a portion of the package (i.e. the guest pays for a golf package but does not play golf).

Note: This regulation references tax rates of 7% for the sales tax on accommodations, 6% for the sales tax on additional guest charges, and 6% for the sales tax on sales or rentals of tangible personal property. Counties may now impose several types of local option sales and use taxes as well as other local taxes imposed upon the furnishing of accommodations and the sale of prepared meals. Some of these taxes are collected by the Department of Revenue on behalf of the county imposing the tax and others are collected by the county itself.

Fiscal Impact Statement:

There will be no impact on state or local political subdivisions expenditures in complying with this proposed legislation. There will be a minimal increase to general fund collections.

Statement of Rationale:

The purpose of this proposal is to amend SC Regulation 117-307 and SC Regulation 117-307.1 to change the 5% tax rate to the new 6% tax rate with respect to additional guest charges at places providing sleeping accommodations under Code Section 12-36-920(B) and all other sales of tangible personal property at a place providing sleeping accommodations. The proposal to amend SC Regulation 117-307 and SC Regulation 117-307.1 is needed to reduce any taxpayer confusion that may result from having a published regulation that is in conflict with the law. The proposal to amend SC Regulation 117-307 and SC Regulation 117-307.1 is also reasonable in that it is the department’s responsibility to maintain regulations that are up-to date and consistent with the law. The regulation would be effective on June 1, 2007 – the effective date of the 6% tax rate.

Resubmitted: May 15, 2008

Document No. 3167
DEPARTMENT OF TRANSPORTATION
 CHAPTER 63
 Statutory Authority: 1976 Code Section 57-1-370

63-30 SCDOT Commission Approval of Actions

Synopsis:

The South Carolina Department of Transportation proposes a new regulation numbered 63-30 setting forth the procedure for Commission review and approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction of projects under ten million dollars as required by Act 114 of 2007. The regulations establish the objective and quantifiable standards to be applied to certify that any actions approved are needed and the delegation of authority to professional staff to make such certifications for installation of new signals and curb cuts on primary routes. The promulgation of 63-30 will notify the public of the procedures already being implemented as required by Act 114 of 2007.

A Notice of Drafting and the Proposed Regulation were published in the State Register on July 27, 2007, and October 26, 2007, respectively. No public hearing was required pursuant to S.C. Code Section 1-23-110(b) and none was held.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-30A	This subsection defines terms used in the regulations.
63-30B	This subsection describes the procedure by which requests for resurfacing may be approved by SCDOT.
63-30C	This subsection describes how requests for installation of new traffic control signals may be approved by SCDOT.
63-30D	This subsection describes how requests for curb cuts on primary routes in the state highway system may be approved by SCDOT.
63-30E	This subsection describes how requests for bike lanes may be approved by SCDOT.

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- 63-30F This subsection describes how construction projects under ten million dollars may be approved by SCDOT.
- 63-30G This subsection provides for reports to the Commission to be made by the Secretary of Transportation related to actions approved pursuant to this regulation.

Instructions:

Insert a new section in S.C. Code of Regulations numbered 63-30 which reads as follows:

Text:

63-30. Commission Approval of Actions.

A. Definition of Terms.

1. "Request" means an oral or written communication from a member of the public or a public official asking for action to be taken. It does not include actions scheduled or initiated by SCDOT staff in the performance of their job duties.
2. "Resurfacing" means the placement of hot mix asphalt along the entire width of the roadway between defined termini in layers greater than or equal to 125 pounds per square yard.
3. "Traffic Control Signal" means any highway traffic signal operated by electronic or mechanical means by which traffic is alternately directed to stop and permitted to proceed.
4. "New Signal" means a traffic control signal to be placed at a location that is not currently controlled by a traffic control signal.
5. "Curb Cuts" means a point where access is allowed for ingress and egress of motor vehicle traffic onto a primary route within the State Highway System.
6. "Bike Lanes" means a portion of a roadway which has been designated by striping, signing and pavement markings for the preferential or exclusive use of bicyclists.
7. "Construction Project" means the addition of a new road, bridge or highway component or the substantial alteration of an existing road or bridge within the state highway system undertaken by contracting with an outside entity to perform the work. Requests for work to replace or repair existing roadway features or improve drainage systems is a maintenance request and will be handled pursuant to Section 63-100 of these regulations.
8. "Publications" referred to in this section may be obtained by contacting the SCDOT Publications Office.
9. "State Highway Engineer" means the division director of the construction, engineering and planning division of SCDOT.

B. Requests for Resurfacing.

1. All requests for the resurfacing of any road on the state highway system will be referred to the State Highway Engineer or his designee for investigation. The State Highway Engineer will make a recommendation to the Commission as to whether the resurfacing is needed based upon the factors in subsection 2 below. The Commission will review the recommendation of the State Highway Engineer and approve or disapprove the request for resurfacing. If approved, the Commission will certify that the

resurfacing is needed.

2. The determination of need for the requested resurfacing will be based upon the following objective and quantifiable factors:

- a. pavement condition;
- b. traffic volume;
- c. current pavement maintenance costs for the road;
- d. the road's location and significance to the community and local businesses; and
- e. available funding.

3. Each resurfacing request that is certified as needed will be assigned a priority pursuant to Section 63-10 of these regulations.

4. Resurfacing dangerous and deteriorating roads and highways is central to providing the public a safe, efficient transportation system. The department recognizes that rural and urban areas have separate and distinct resurfacing needs. It is the policy of the department to meet the resurfacing needs of urban and rural areas. The department will take all steps necessary to allocate its limited resources to provide the best possible balance between rural and urban resurfacing needs. The department will not implement a resurfacing resource distribution formula or base resurfacing resource allocations on criteria that have the effect of depriving either rural or urban areas of road resurfacing.

C. Requests for Installation of New Signals.

1. All requests for installation of new traffic control signals on the state highway system shall be evaluated by the State Highway Engineer or his designee to determine if the signal is justified based on compliance with the objective and quantifiable standards published in the current editions of the following publications:

- a. Part 4 of the *Manual on Uniform Traffic Control Devices*;
- b. SCDOT Traffic Signal Design Guidelines;
- c. SCDOT Access and Roadside Management Standards; and
- d. SCDOT Engineering Directive Memorandum Number 2, "Fiscal and Maintenance Responsibilities for Traffic Signal Installations on the State Highway System."

2. If the State Highway Engineer or his designee determines that the new signal is justified, he or she will recommend approval of the installation of the signal as funding is available. Before the signal may be installed the Commission or its designee must approve and certify that the signal is needed based on the objective and quantifiable factors referenced in subsection 1 above.

D. Requests for Curb Cuts on Primary Roads.

1. All requests for curb cuts on primary routes on the state highway system shall be evaluated by the State Highway Engineer or his designee to determine if the curb cut is acceptable based on compliance with the objective and quantifiable factors published in the current editions of the following publications:

- a. SCDOT Access and Roadside Management Standards;
- b. SCDOT Engineering Directive Memorandum Number 16, "Installation of Residential Driveway Entrances by Maintenance Forces;"
- c. SCDOT Guidelines for School Transportation Design; and
- d. Section 63-370 of these regulations.

2. On highway construction projects access shall be installed to properties in accordance with any Right-of-Way Special Provisions noted in plans based on agreements with the landowner.

3. If the State Highway Engineer or his designee determines that a curb cut is acceptable, he or she will recommend approval of the encroachment permit or installation of the curb cut to the Commission or its

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designee. The Commission or its designee must certify that the curb cut is acceptable based on the objective and quantifiable factors in subsection 1 above before the encroachment permit or installation of the curb cut may be approved.

4. A requestor aggrieved by a decision of a designee of the Commission regarding a curb cut may request a final agency decision from the SCDOT Commission. A decision of the Commission approving or disapproving a curb cut is a decision of the department subject to judicial review pursuant to S.C. Code Section 57-5-1120.

E. Requests for Bike Lanes.

1. All requests for bike lanes will be referred to the State Highway Engineer or his designee for investigation and consideration of the request. The State Highway Engineer or his designee will make a recommendation to the Commission as to whether the addition of bike lanes is acceptable based on compliance with objective and quantifiable factors in subsection (E)(2).

2. The Commission will review the recommendation of the State Highway Engineer and approve or disapprove the request for bike lanes. If approved, the Commission will certify that the addition of bike lanes is needed based on the following objective and quantifiable factors:

- a. existing paved roadway width;
- b. current travel lane widths;
- c. traffic volume, including truck percentage;
- d. posted speed limit;
- e. pavement condition;
- f. presence of conflicting roadway appurtenances and features;
- g. documentation of bicyclist/motorist conflicts by observations and/or crash records;
- h. the context and significance of the road to the community;
- i. consistency with which the request complies with or compliments bike trail priorities or bike trail plans established within the region by governmental agencies;
- j. the extent to which the requesting entity has demonstrated a commitment to assist with funding the project;
- k. the extent to which the requesting entity has demonstrated a commitment to provide for maintenance of the facility requested; and
- l. available funding.

3. If an approved bike lane improvement is associated with a highway improvement project it will be constructed along with that project according to the priority established for the highway improvement project pursuant to Section 63-10 of these regulations. If the bike lane is not associated with a highway improvement project it will be assigned a priority pursuant to Section 63-10.

F. Construction Projects Under Ten Million Dollars.

All requests for construction projects estimated to cost less than ten million dollars will be reviewed by the Secretary of Transportation or his or her designee based on the prioritization process set forth pursuant to Section 63-10 above. The Secretary of Transportation shall make recommendations to the Commission concerning each request. By approving a contract the Commission certifies that the project is needed based upon the objective and quantifiable factors set forth in SCDOT regulations applicable to that contract. Any extension of an existing contract must be approved pursuant to S.C. Code Section 57-5-1630.

G. Report on Actions.

The Secretary of Transportation shall make a monthly report to the Commission on actions approved pursuant to subsections C and D of this section and on the status of each action approved by the Commission

pursuant to subsections B-F of this section if there has been a material change in the status since the last report. A copy of the report will be included in the Commission meeting minutes.

Fiscal Impact Statement:

The costs associated with the office and duties described in this regulation are required by Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

Statement of Rationale:

The purpose of this regulation is to set forth the procedure for Commission review and approval of requests for resurfacing, installation of new signals, curb cuts on primary roads, bike lanes, or construction of projects under ten million dollars. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

Resubmitted: May 15, 2008

Document No. 3195
DEPARTMENT OF TRANSPORTATION
 CHAPTER 63
 Statutory Authority: 1976 Code Section 57-5-1650 and 57-3-110

63-306 - 307 Prequalification of Bidders

Synopsis:

The South Carolina Department of Transportation proposes to promulgate a new regulation numbered 63-307 to provide for a system of contractor performance evaluation and to require a minimum contractor performance score as a prerequisite for bidding on designated projects. The department is also proposing amendments to regulation 63-306 to change references to “Executive Director” to reflect the fact that Act 114 of 2007 eliminated that office and established a Secretary of Transportation as the department’s chief executive officer. Other amendments are to improve the readability and clarity of the regulations without making a substantive change.

A Notice of Drafting for the proposed regulation was published in the State Register on September 28, 2007. No public hearing was required pursuant to S.C. Code Section 1-23-110(b) and none was held.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-306	This section has been amended to make reference to provisions of 63-307 and to replace references to “Executive Director” or “Director” with “Secretary of Transportation” or “Secretary.”
63-307	This is a new section of regulation providing for a system of contractor performance evaluation and allowing the department to require a minimum contractor performance score for contractors bidding on designated projects.

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Instructions:

Amend Section 63-306 of the S.C. Code of Regulations as indicated below and insert a new section in S.C. Code of Regulations numbered 63-307 which reads as follows:

Text:

63-306. Disqualification and Suspension from Participation in Contracts with the South Carolina Department of Transportation.

A. Policy Statement. Recognizing that preserving the integrity of the public contracting process is vital to the development of a balanced and efficient transportation system and is a matter of interest to all people of the State, it is hereby declared:

1. The procedures for bidding and qualification of bidders on contracts involving the South Carolina Department of Transportation exist to secure the quality of public works.

2. The opportunity to bid on contracts, to participate as subcontractor or to supply goods or services to the Department is a privilege, not a right.

3. In order to preserve the integrity of the public contracting process, the privilege of transacting business with the Department should be denied to persons involved in criminal and/or unethical conduct.

4. Therefore, as a means of maintaining the integrity of the public contracting process and protecting the public at large, persons engaging in criminal and/or unethical conduct will not be allowed to transact business with the Department during the period of any suspension or disqualification.

B. Definitions.

1. Affiliate: Any business entity having direct or indirect control over, or which is controlled directly or indirectly, by any person who has been disqualified, suspended or prevented from bidding because of a contractor score. Indicia of control include, but are not limited to: interlocking management or ownership; identity of interest among family members; shared facilities and equipment; common use of employees; or any business entity organized following the suspension or disqualification of a person which has the same or similar management, ownership, or principal employees of the disqualified or suspended person.

2. Business Entity: A corporation, partnership, limited partnership, association or sole proprietorship.

3. Civil Judgment: The disposition of a civil action by any court of competent jurisdiction, whether entered by verdict, decision, settlement, stipulation or otherwise, creating civil liability for the wrongful acts complained of.

4. Commission: The Commission of the South Carolina Department of Transportation.

5. Contractor's Certificate: A Prequalification Certificate issued by the Department to qualified contractors as a necessary condition to bid on contracts with the Department.

6. Conviction: A judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a plea of non contendere.

7. Department: South Carolina Department of Transportation.

8. Disqualification: An action taken in accord with these regulations to exclude a person from participating as a contractor, subcontractor, supplier, or in any other role under any contract with the Department during the period of disqualification.

9. Secretary: The Secretary of Transportation of the State of South Carolina.

10. Person: Any individual, corporation, partnership, limited partnership, association, sole proprietorship or any other business entity.

11. Principal: Officer, director, owner, partner, key employee or any other person within a business entity with primary management or supervisory responsibilities; or a person who has critical influence on or substantial control over the actions or conduct at issue, whether or not employed by the business entity.

12. Suspension: An action taken in accord with these regulations that immediately excludes a person from participating in any contracts with the Department for a temporary period.

13. Unlawful payment or gratuity: Transfer of anything of value to a Department employee in violation of state statute or regulatory law or Departmental policy.

C. Disqualification. Any person who violates any of the standards of conduct identified below may be subject to disqualification or suspension. Disqualification may be imposed for:

1. Conviction of any crime reflecting a lack of business integrity or business honesty, including but not limited to, crimes involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statement, receiving stolen property, anti-trust violations, making false claims, making any unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

2. Civil judgment for any acts or omissions reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

3. Final administrative decisions by any governmental agency responsible for supervising or regulating public contracts, standards of ethical conduct or licensure for any acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of ethical standards or conspiracy to commit any of the above.

4. Any act or omission reflecting a lack of business integrity or business honesty, including, but not limited to, acts or omissions involving fraud, deceit, embezzlement, theft, forgery, bribery, falsification or destruction of records, bid rigging, price fixing, making false statements, receiving stolen property, anti-trust violations, making false claims, making an unlawful payment or gratuity, obstruction of justice, violation of a debarment agreement, violation of the ethical standards or conspiracy to commit any of the above.

5. Willful violation of any provision of a contract with the Department, or any regulatory or statutory provision relating to such contract, while serving as a contractor, subcontractor or supplier.

6. Persistent failure to perform or incompetent performance on one or more contracts with the Department as a contractor, subcontractor or supplier; or

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7. Knowingly allowing any person disqualified or suspended pursuant to this regulation, or by any other governmental or regulatory agency, to serve as a subcontractor or supplier or to play any other role under any contract with the Department without prior written authorization from the Secretary.

8. Failure to cooperate fully and completely with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

D. Suspension. In the event the Department finds that the public health, safety or welfare imperatively requires emergency action, a suspension may be implemented immediately pending a hearing, which shall be promptly provided on the issue of suspension. The grounds for a suspension shall be in accord with the standards for disqualification enumerated above.

E. Procedures.

1. Notice of disqualification, suspension, or sanctions may be issued by the Secretary and shall include:

- (a) A reference to the particular sections of the statutes, regulations, and rules involved;
- (b) A short and plain statement of the matters asserted.

2. The SCDOT shall have broad equitable powers in the impositions of civil sanctions, with the goal of preserving the integrity of the public contracting process and protecting the public at large. Any civil sanction imposed shall be remedial in nature and may include, but not limited to:

- (a) disqualification for a specific period of time;
- (b) monetary penalty;
- (c) restitution and reimbursement to the Department for the cost of any investigation or proceedings relating to the circumstances leading to any sanctions; and
- (d) conditions which must be met prior to restoration of a Contractor's Certificate.

3. A person may seek relief from the disqualification or suspension by requesting a contested case hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600 and the rules of procedure for the Administrative Law Judge Division. The request for a hearing must be made within thirty (30) days of receipt of SCDOT's Notice of Disqualification or Suspension.

F. Scope of Disqualification.

1. In the event a person is suspended or disqualified under this regulation, such person, and any affiliate of such person, shall be disqualified from serving as a contractor, subcontractor or supplier or performing any other service or role under any contract with the Department during the period of suspension disqualification.

2. A violation of the terms of any suspension/disqualification may be the basis of further sanction.

3. In the event that a person disqualified under this regulation is performing or providing services or materials on a Department project at the time of said disqualification, the Department may, in its discretion, allow the disqualified person to complete its obligation under the contract when such completion is in the public interest.

4. In the event a person which is a business entity is disqualified or suspended under this regulation, such disqualification or suspension shall be applicable to any principal of said business entity.

G. Duty of Disqualified/Suspended Persons. A disqualified or suspended person shall cooperate fully with any investigation by the Department or any other appropriate regulatory or law enforcement agency. Such

cooperation shall include, but not be limited to, disclosure of all written or computerized records and a full and complete accounting of the person's actions in the matter under investigation. In the event a disqualified or suspended person fails to cooperate, as required by this paragraph, further remedial measures may be taken against the person, up to and including permanent disqualification. Assertion of Fifth Amendment right against self-incrimination shall not be construed as a failure to cooperate under this regulation.

H. Reinstatement of Contractor's Certificate. Any person disqualified or suspended under this regulation shall immediately lose its Contractor's Certificate. The disqualified or suspended person may apply for the reinstatement of the Contractor's Certificate upon completion of the period of suspension or disqualification and satisfaction of all conditions imposed by any final order or settlement. Any application for the reinstatement of a Contractor's Certificate shall be subject to the then existing statutory and regulatory provisions and Departmental policies relating to pre-qualification of bidders.

63.307 Contractor Performance Evaluation.

A. Contract Performance Evaluation System.

1. The South Carolina Department of Transportation may use a contract performance evaluation system to evaluate the performance of a contractor on highway and bridge construction projects and to assign a contractor performance score. The Department shall use evaluation criteria and quality audits that include, but are not limited to:

- a) Objective evaluation of how well the contractor completed projects on schedule and within the bid amount;
- b) Field audits conducted during construction that evaluate the contractor's performance on active projects;
- c) Objective evaluation of the merit of claims filed by the contractor based on the proportional amount of each claim that was upheld and awarded to the contractor;
- d) Evaluations by the Resident Construction Engineers on the contractor's completed projects, which include rating of the contractor's performance in such areas as safety, environmental issues, the contractor's personnel and equipment, public relations, and compliance with Equal Employment Opportunities statutes, the Davis Bacon Act, and Disadvantaged Business Enterprise goals.

2. The Department may revise the evaluation criteria as it deems necessary to ensure equitable evaluation of all contractors.

B. Minimum Required Contractor Performance Score.

The Department may require bidders to have a minimum contractor performance score to bid on a project. The Department shall determine the appropriate minimum score for a project based on an evaluation of criteria that includes, but is not limited to: design complexity, critical time constraints, environmental sensitivity, complex traffic control, location in densely populated areas, need for specialized equipment, high traffic volume, and project cost. All prequalified contractors whose contractor performance score is below the minimum shall not be allowed to bid on projects that require a minimum required contractor performance score. Prequalified contractors who have never had or do not have a current contractor performance score will not be subject to this bidding restriction.

C. Definitions.

1. Minimum Required Contractor Performance Score: A minimum contractor performance score set by the Department for a particular project for acceptance of bids. The minimum score shall be set based on criteria established by the Department.

2. State Highway Engineer: The Deputy Secretary of Transportation of SCDOT.

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D. Contractor Performance Score. A contractor performance score for each contractor may be determined by the Department using performance evaluations and quality audits of the contractor's performance compiled by the Department. All active contractors shall be periodically notified of their contractor performance score.

E. Contractor's Right to Review of its Performance Score. A contractor may request a conference to review the calculation of its contractor performance score and the information upon which the score is determined by requesting a review conference with the Director of Construction or his or her designee.

F. Contractor's Right to Appeal Its Contractor Performance Score. A contractor may appeal its contractor performance score to the State Highway Engineer. The appeal must be in writing and include the basis for the appeal. The State Highway Engineer may consider evidence submitted by the contractor and any other relevant evidence and consult with SCDOT staff and any other person or entity for recommendations concerning the appeal. The State Highway Engineer shall make a recommendation to the Secretary, who shall issue a final agency decision on the appeal within ninety (90) days of the receipt of the appeal.

Fiscal Impact Statement:

The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations. SCDOT is likely to achieve some savings due to reduced legal and administrative costs, but those savings are too speculative to quantify.

Statement of Rationale:

The purpose of this regulation is to provide for a system of contractor performance evaluation and to require a minimum contractor performance score as a prerequisite for bidding on designated projects. The department is also proposing amendments to regulation 63-306 to change references to "Executive Director" to reflect the fact that Act 114 of 2007 eliminated that office and established a Secretary of Transportation as the department's chief executive officer. There are no scientific or technical studies necessary to promulgate these regulations.

Document No. 3168
DEPARTMENT OF TRANSPORTATION
 CHAPTER 63

Statutory Authority: 1976 Code Sections 57-1-460, 57-1-470 and 56-5-1620

63-100. SCDOT Secretary of Transportation Approval of Actions

Synopsis:

The South Carolina Department of Transportation proposes a new regulation numbered 63-100 setting forth the procedure for Secretary of Transportation approval of requests for routine operation and maintenance and emergency repairs as required by Act 114 of 2007. The regulation establishes the objective and quantifiable standards to be applied by the Commission in making its findings as to whether requests approved by the Secretary meet the needs of the public. The promulgation of Regulation 63-100 will notify the public of the procedures already being implemented as required by Act 114 of 2007.

A Notice of Drafting and the Proposed Regulation were published in the State Register on July 27, 2007, and October 26, 2007, respectively. No public hearing was required pursuant to S.C. Code Section 1-23-110(b) and none was held.

Section-By-Section Discussion:

SECTION CITATION: EXPLANATION OF CHANGE:

- | | |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 63-100A. | This section defines terms used in the regulation. |
| 63-100B. | This section describes the procedure for approval of requests for routine operation and maintenance by SCDOT and reports that will be made to the commission regarding those requests. |
| 63-100C. | This section describes the process for expedited award of emergency contracts by SCDOT. |

Instructions:

Insert a new regulation in S.C. Code of Regulations numbered 63-100 which reads as follows:

Text:

63-100. Secretary of Transportation Approval of Actions.

A. Definition of Terms

1. "Request" means an unsolicited oral or written communication from a member of the public or a public official asking for action to be taken. It does not include actions scheduled or initiated by SCDOT staff in the performance of their job duties.

2. "Routine operation and maintenance" means the following items that are not included in the State Transportation Improvement Plan (STIP):

- a. signage of routes;
- b. pavement marking;
- c. replacement and installation of guard rails;
- d. repair and installation of signals;

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- e. chip seal of existing roads;
 - f. enhancement projects;
 - g. curb cuts on secondary roads in the state highway system;
 - h. installation of overhead message boards and cameras; and
 - i. research projects (including pavement management systems and mapping).
3. “Repair and installation of signals” means the repair or replacement of an existing traffic control signal.
4. “Traffic Control Signal” means any highway traffic signal operated by electronic or mechanical means by which traffic is alternately directed to stop and permitted to proceed.
5. “Enhancement project” means streetscaping, Adopt an Interchange and bike lanes funded by sources other than those administered by SCDOT. Permission to perform work on the highway rights-of-way and oversight and standards for such projects are granted through encroachment permits. For purposes of this regulation “enhancement project” does not include grants funded by Federal Enhancement funds. Those projects are awarded by the Commission pursuant to S.C. Code Section 57-1-370(D).
6. “Curb cuts on secondary roads” means a point where access is allowed for ingress and egress of motor vehicle traffic onto a secondary route within the State Highway System.
7. “Overhead message boards and cameras” are devices used to manage and monitor the flow of traffic on roadways. It does not include security cameras, cameras installed for law enforcement purposes, or cameras that are components of a traffic signal operation.
8. “Research projects” means federally funded research projects, pavement management system activity or mapping.
9. “Emergency repairs” means, but is not limited to, repairs necessary due to unforeseen deterioration of or damage to roads, bridges, or equipment due to accidents, natural disasters, or other causes that could not have been expected or that pose an immediate danger to the public.
10. “State Highway Engineer” means the division director of the construction, engineering and planning division of SCDOT.
11. “Publications” referred to in this section may be obtained by contacting the SCDOT Publications Office.

B. Requests for Routine operation and maintenance.

1. The Secretary of Transportation or his designee shall evaluate and approve requests for routine operation and maintenance as defined in subsection A.2.. The Secretary of Transportation or his designee shall make a monthly report to the Commission listing all requests for routine operation and maintenance, whether each request was approved or denied, and certifying that each approved action is needed based on the objective and quantifiable factors applicable to that action. The Commission shall review the report and make findings as to whether the requests approved by the Secretary meet the needs of the public based upon the relevant objective and quantifiable factors in subsection B.2.. A copy of the report will be included in the Commission meeting minutes.

2. The following objective and quantifiable factors will be used by the Commission to determine if a particular request for routine operation and maintenance meets the needs of the public and by the Secretary of Transportation or his designee in certifying those actions to the Commission:

a. Signage of routes and pavement markings must be justified based on compliance with the current publication of the *Manual on Uniform Traffic Control Devices* and Regulation 63-338.

b. Repair and replacement of existing guard rails will be approved and prioritized in accordance with the current publication of “SCDOT Guardrail, Cable Barrier, and Crash Attenuator Inspection and Repair Guidelines,” and available funding.

c. Installation of new guard rails will be evaluated and prioritized based on average daily traffic on the route, applicable crash data, and the criteria defined in the current publication of AASHTO’s Roadside Design Guide, and available funding.

d. Repair and installation of traffic control signals will be approved in accordance with the current publications of Part 4 of the *Manual on Uniform Traffic Control Devices*, SCDOT’s Traffic Signal Design Guidelines, SCDOT’s Access and Roadside Management Standards, and SCDOT Engineering Directive Memorandum Number 2, “Fiscal and Maintenance Responsibilities for Traffic Signal Installations on the State Highway System;” and prioritized based upon available funding.

e. Chip seal of existing roads will be approved and prioritized based upon pavement condition, traffic volume, truck traffic, current pavement maintenance costs for the road, the road’s location and significance to the community and local businesses, and available funding.

f. Approval of enhancement project encroachment permits must be justified based on compliance with the current publication of SCDOT’s Access and Roadside Management Standards, SCDOT Engineering Directive Memorandum Number 17, “Encroachment Permits;” and SCDOT Engineering Directive Memorandum Number 29 “Vegetation Management on State Highways.”

g. Curb cuts on secondary roads in the state highway system may be approved based upon the objective and quantifiable factors in the current publications of SCDOT’s Access and Roadside Management Standards, SCDOT’s Engineering Directive Memorandum Number 16, “Installation of Residential Driveway Entrances by Maintenance Forces;” SCDOT’s Guidelines for School Transportation Design, and Regulation 63-370.

h. Installation of overhead message boards and cameras must be justified based on available funding, average daily traffic volume, location where key motorist decision-making occurs, location critical for hurricane evacuation routing, demonstrated high use location of portable devices, or connectivity to the existing Intelligent Transportation System.

i. Requests for research projects may be included in the annual program recommended to the Federal Highway Administration. Research projects shall be chosen based upon prioritization considering available funding, benefit to the overall management of the state highway system, and qualification for federal State Planning and Research funding.

C. Contracts for Emergency Repairs.

The Secretary of Transportation shall determine when an emergency exists that justifies the immediate and expedited award of a contract. If an emergency is declared by the Secretary of Transportation, a qualified contractor or contractors capable of performing the work may be employed pursuant to S.C. Code Section 57-5-1620 without the formalities of advertising. If such an emergency contract is entered, a report shall be made by the Secretary of Transportation to the Commission at its next meeting describing the situation justifying the emergency contract, the firm the contract was awarded to, and the contract price. A copy of the Secretary’s report will be included in the Commission meeting minutes.

Fiscal Impact Statement:

The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

Statement of Rationale:

The purpose of this regulation is to set forth the procedure for Secretary of Transportation approval of requests for routine operation and maintenance and emergency repairs. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.

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Resubmitted: May 15, 2008

Document No. 3165
DEPARTMENT OF TRANSPORTATION
CHAPTER 63
Statutory Authority: 1976 Code Section 57-1-370

63-10. Transportation Project Prioritization

Synopsis:

The South Carolina Department of Transportation proposes a new regulation numbered 63-10 setting forth the procedure for prioritizing certain transportation improvement projects as required by Act 114 of 2007. The promulgation of 63-10 will notify the public of the procedures already being implemented as required by Act 114 of 2007.

A Notice of Drafting and a Proposed Regulation were published in the State Register on July 27, 2007, and October 26, 2007, respectively. No public hearing was required pursuant to S.C. Code Section 1-23-110(b) and none was held. The South Carolina Coastal Conservation League submitted formal comments following the publication of the Proposed Regulation. This regulation promulgated by the SCDOT Commission and submitted for General Assembly review and approval includes changes from the language of the October 26, 2006 publication of the Proposed Regulation made in response to those comments.

Section-By-Section Discussion:

SECTION CITATION:	EXPLANATION OF CHANGE:
63-10(A)	This section defines terms used in the regulation.
63-10(B)	This section describes the State Comprehensive Plan for transportation improvements and the process for adopting updated plans by SCDOT.
63-10(C)	This section describes and defines the project priority lists required by S.C. Code Section 57-1-370(B) (8) (Act 114 of 2007). It details the procedure by which SCDOT will create and adopt those lists, and provides for a justification based upon fiscal, engineering or other transportation considerations when a project is placed in the STIP which substantially deviates from the priority list.
63-10(D)	This section describes the Statewide Transportation Improvement Program (STIP) and the process for adopting a new STIP or revision to an existing STIP by SCDOT.
63-10(E)	This section describes the State Program and the process for adopting a new State Program or revision to an existing State Program by SCDOT.

Instructions:

Insert a new section in S.C. Code of Regulations numbered 63-10 which reads as follows:

Text:

A. Definition of Terms.

1. "State Comprehensive Plan" is the long-range statewide transportation plan, with a minimum twenty-year forecast period at the time of adoption, that provides for the development and implementation of the multimodal transportation system for the State required by Section 57-1-370(A). It shall be consistent with federal planning requirements. It includes, by reference, all applicable plans, policies or reports relevant to the development of the plan. The State Comprehensive Plan includes the plan specifying objectives and performance measures for the preservation and improvement of the existing state highway system required by S.C. Code Section 57-1-370(C). Projects from the State Comprehensive Plan may be ultimately included in the STIP or State Program.

2. "Statewide Transportation Improvement Program (STIP)" means a statewide prioritized program of federally funded transportation projects or phases of projects. The STIP must cover a period of at least four years and must be updated at least once every four years. The STIP must be consistent with the Statewide Comprehensive Plan and Metropolitan Planning Organization ("MPO") Transportation Improvement Programs ("TIPs"). All federally funded projects and/or categories of projects are required to be included in the STIP in order to be eligible for federal funds pursuant to Title 23 and Title 49, Chapter 53 of the United States Code.

3. "State Program" includes the state non federal aid improvement program and maintenance activities funded wholly by state funds administered by the Department of Transportation without federal funding participation.

4 "Metropolitan Planning Organization (MPO)" means the entity designated to carry on the continuing, comprehensive, cooperative transportation planning process for an urbanized area in accordance with 23 USCA 134 and applicable regulations.

5. "Council of Government (COG)" means the entity organized pursuant to S.C. Code Section 6-7-110 and designated to carry on the continuing, comprehensive, cooperative transportation planning process for a rural area.

6. "Project priority list" means a priority ranking of the projects proposed for inclusion in the STIP or State Program. The priority list shall be established by the Commission based upon engineering recommendations and advice, and application of the criteria set out in S.C. Code Section 57-1-370(B)(8) relevant to each category of projects according to the requirements and procedures specified in these regulations.

7. "Publications" referred to in this section may be obtained by contacting the SCDOT Publications Office.

8. "Traffic control devices" means all signs, signals, markings and other devices used to regulate, warn or guide traffic, placed on, over or adjacent to a street, highway, pedestrian facility, or bikeway.

B. The State Comprehensive Plan.

1. The State Comprehensive Plan will be updated every five years, or more frequently if deemed appropriate by the Commission. The plan will be developed in accordance with all applicable federal guidelines and regulations, including a minimum twenty-year forecast period estimating future transportation needs and projected costs. It will include goals and objectives for long-term strategies for addressing transportation needs across the state. The State Comprehensive Plan will include objectives and performance measures for the preservation and improvement of the existing state highway system.

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2. The State Comprehensive Plan will be subdivided into the following categories:
 - a. bridge;
 - b. interstates;
 - c. maintenance (resurfacing, guardrail, and maintenance bridges);
 - d. mass transit;
 - e. statewide significant corridors;
 - f. passenger and high speed rail;
 - g. rail corridor preservation;
 - h. non-motorized transportation modes;
 - i. State Strategic Highway Safety Plan;
 - j. MPO long-range plans;
 - k. COG long-range plans; and
 - l. statewide plan for twenty-year routine maintenance needs.

3. The State Comprehensive Plan will include a public involvement plan providing for multiple opportunities for input by an advisory task force or committee, COG or MPO, transportation user groups and the general public. A copy of the draft plan will be made available to the public for review and comment at each engineering district office and COG office.

4. The Secretary of Transportation will present the State Comprehensive Plan to the Commission for approval along with all comments received. After approval by the Commission, the final State Comprehensive Plan will be published on the SCDOT website. The State Comprehensive Plan may be revised from time to time as permitted by federal law or regulation.

C. Project Priority Lists.

1. The Commission shall establish statewide project priority lists for all federal aid program projects proposed to be included in the STIP and State non federal aid program projects. The Secretary of Transportation shall present a recommendation for Commission approval using a detailed analysis and evaluation applying the specific criteria applicable to each project category. State Infrastructure Bank, local option sales tax projects, and projects funded solely by C-Funds are excluded from the project prioritization process established by S.C. Code Section 57-1-370(B)(8). Congressional earmark projects and projects individually funded by the General Assembly will be prioritized prior to commission action approving those projects for inclusion in the STIP or State Program if the project falls within a project category on the priority list.

2. The project priority list is a decision-making tool to provide information to the Commission and the public. The order in which projects appear in the priority list is the order in which those projects will be placed in the STIP unless the commission provides a written justification based upon circumstances that warrant a deviation from the established order on the list. The circumstances upon which the commission may deviate from the list are significant financial or engineering considerations, delayed permitting, *force majeure*, pending legal actions directly related to the proposed project that is bypassed, federal law or regulation, or economic growth.

3. The State Highway Engineer shall develop a ranking process for applying uniform and objective criteria applicable to each project category included in the priority list. The ranking process will be described in an engineering directive issued prior to the development of the priority list. That ranking process shall list the criteria to be considered in each project category, and include a methodology for applying the criteria and the weight to be accorded each criterion where applicable. The criteria shall include any criteria listed in S.C. Code Section 57-1-370(B)(8) which is relevant to the project category and any other criteria relevant to the project category.

4. In project categories where evaluating the environmental impacts is an approved criterion for prioritization, environmental impacts to be evaluated should consider the potential adverse effects of the project on natural resources including, to the extent applicable to the particular project:

- (a) wetlands and other aquatic resources;
- (b) water quality;
- (c) endangered species and wildlife;
- (d) natural areas and forests (including fragmentation thereof); parklands, refuges, preserves and other public properties managed primarily for their natural resource values; and
- (e) secondary impacts (induced growth) on natural resources.

5. In project categories where evaluating alternative transportation solutions is an approved criterion for prioritization, alternative transportation solutions should include potential alternatives to the proposed project that are economically viable and potentially less disruptive to both the human and natural environment, including local flow improvements such as turn lanes and improved signalization, and potential for modal alternatives such as transit and rail freight.

6. In project categories where evaluating consistency with local land use plans is an approved criterion for prioritization, the proposed project, including its growth-inducing impacts, will be evaluated for consistency with zoning or other land use classifications in the local comprehensive plan for the geographic area impacted by the project.

7. In project categories where evaluating potential for economic development is an approved criterion for prioritization, the evaluation of potential economic development will include a consultation with the Department of Commerce.

8. In project categories evaluating financial viability as a criterion for prioritization, the evaluation of financial viability will include an evaluation of the anticipated funding sources for the project, the projected total cost of the project by the time the project is reasonably anticipated to be completed, taking into account expected future cost increases, and an analysis of the costs of maintenance and repair over the life of the project.

D. Statewide Transportation Improvement Program.

1. A draft of a new STIP or any revision to the STIP to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary of Transportation and presented to the Commission for consideration and approval. The draft STIP will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated federal-aid funding levels by program. The draft STIP will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft STIP will be presented to the Commission for review along with any relevant project priority rankings, the recommendations of local transportation technical committees, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan resulting from federal legislation.

3. The STIP adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the federal-aid programs during the years covered by the STIP. After approval by the SCDOT Commission the STIP will be submitted to the Federal Highway Administration and the Federal Transit Administration for final approval and published in the SCDOT website.

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E. State Program.

1. A draft of a new State Program or any revision to the State Program to adjust category or project information relating to cost, schedule, scope, and priority will be prepared under the direction of the Secretary of Transportation and presented to the Commission for consideration and approval. The draft State Program will include fiscally constrained project cost and schedule information for the reporting period and will be based on estimated funding levels by program. The draft State Program will be made available to the public for review and comment at each SCDOT district office and at the COG offices.

2. The draft State Program will be presented to the Commission for review along with any relevant project priority rankings, and all public comments received. The Secretary may make recommendations to the Commission regarding any funding changes to the annual allocation plan. The State Program adopted and approved by the Commission will reflect Commission decisions on the overall funding distribution for the program during the years covered by the State Program.

Fiscal Impact Statement:

Significant costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The costs associated with the standards and procedures described in the regulation are required pursuant to Act 114 of 2007. The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed regulations.

Statement of Rationale:

The purpose of this regulation is to set forth the procedure for prioritizing certain transportation improvement projects. The promulgation of these regulations is required by Act 114 of 2007. There are no scientific or technical studies necessary to promulgate these regulations.